

**CITY OF DELAWARE**  
**BOARD OF ZONING APPEALS**  
**AGENDA**

**CITY COUNCIL CHAMBERS**  
**1 S. SANDUSKY ST.**  
**7:00 P.M.**

REGULAR MEETING

MARCH 11, 2015

1. ROLL CALL
2. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on February 11, 2015, as recorded and transcribed.
3. REGULAR BUSINESS
  - A. 2015-0210: A request by Brown Jug Storage for approval to allow the construction of a storage unit building (Phase 3) within the required rear and side yard building setback of 50 feet when adjoining a residential district per Chapter 1143.04 Building Setback Requirements at 224 East William Street.
  - B. 2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.
4. BOARD MEMBER COMMENTS AND DISCUSSION
5. NEXT REGULAR MEETING: April 8, 2015
6. ADJOURNMENT



**BOARD OF ZONING APPEALS**  
**February 11, 2015**  
**MOTION SUMMARY**

ITEM 1. Roll Call

Chairman Dick called the meeting to order at 7:00 p.m.

Members Present: Robert Badger, Adam Vaughn, Councilman Joe DiGenova, Vice-Chairman Paul Junk and Chairman Matt Dick

Members Absent: Holly Quaine

Staff Present: Lance Schultz, Zoning Administrator

**Motion:** Mr. Badger moved to excuse Ms. Quaine from the February 11, 2015, Board of Zoning Appeals meeting, seconded by Vice-Chairman Junk. Motion approved by a 5-0 vote.

ITEM 2. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on November 12, 2014, as recorded and transcribed.

**Motion:** Vice-Chairman Junk moved to approve the Motion Summary for the November 12, 2014 meeting, seconded by Mr. Badger. Motion approved by a 5-0 vote.

ITEM 3. REGULAR BUSINESS

(A) 2015-0113: A request by Delaware City Schools for approval of a variance to Schedule 1148.04 Lot Requirements for Conditional Uses in All Districts for minimum building setbacks for Delaware Hayes High School on approximately 29.4 acres zoned R-3 (One-Family Residential District) and located at 289 Euclid Avenue.

Chairman Dick swore in the following individuals for public comment:

Mr. Larry Davis, 149 Westwood Avenue, Delaware, Ohio.

Mr. Walter Gibson, 86 Hayes Drives, Delaware, Ohio.

Mr. Schultz provided background information on the previous Phase 1 project and the proposed Phase 2 project. Mr. Schultz provided a presentation that included the location and zoning map, the proposed plan, and the proposed academic wind expansion plan. Mr. Schultz reviewed the requirements to determine if a variance is appropriate.



APPLICANT:

Mr. Larry Davis, 149 Westwood Avenue, Delaware, Ohio, Representative for Delaware City Schools.

Mr. DiGenova reviewed the conditions with Mr. Davis for approval, in which Mr. Davis voiced his agreement of all conditions.

PUBLIC PARTICIPATION:

Mr. Walter Gibson, 86 Hayes Drive, Delaware, Ohio.

Mr. Gibson voiced a concern on if Delaware City Schools had intentions to purchase homes along Hayes Drive.

Mr. Davis explained to Mr. Gibson that there are no homes in consideration for purchase.

**Motion:** Councilman DiGenova moved to approve 2015-0113, finding beyond a reasonable doubt that the decision factors necessary for approval of a Variance according to Chapter 1128 of the Planning and Zoning Code are met, including all staff recommendations, seconded by Mr. Vaughn. Motion approved by a 5-0 vote.

ITEM 4. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 5. NEXT REGULAR MEETING: March 11, 2015

ITEM 6. ADJOURNMENT

**Motion:** Mr. Badger moved to adjourn the Board of Zoning Appeals meeting, seconded by Vice-Chairman Junk. Meeting was adjourned at 7:11 p.m.

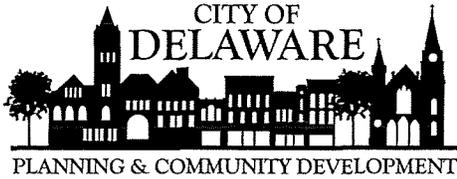
---

Matt Dick, Chairman

---

Elaine McCloskey, Clerk





## BOARD OF ZONING APPEALS / STAFF REPORT

CASE NUMBERS: 2015-0210

REQUEST: Variance

PROJECT: Brown Jug Storage

MEETING DATE: March 11, 2015

### APPLICANT/OWNER

MR Holdings of Dublin, LLC

Jim Manos

5973 Macewen Court

Dublin, Ohio 43017

### REQUEST

2015-0210: A request by Brown Jug Storage for approval to allow the construction of a storage unit building (Phase 3) within the required rear and side yard building setback of 50 feet when adjoining a residential district per Chapter 1143.04 Building Setback Requirements at 224 East William Street.

### PROPERTY LOCATION & DESCRIPTION

The subject 1.456 acre lot is located on the south side of East Williams Street approximately 120 feet west of Cheshire Street. The storage facility is zoned B-3 (Community Business District). The properties to the south, east and west are zoned B-3 (Community Business District) while the property to the north is zoned R-4 (Medium Density Residential District). The rear portion of the subject site would be adjacent to R-4 (Medium Density Residential Property). The current surrounding uses consist of a retail use to the west and single family houses to the north and east while to the south are railroad tracks.

### BACKGROUND

In the past the subject site contained above ground storage tanks until they were removed and the storage buildings were constructed in late 2013. The Planning Commission and City Council approved a Conditional Use Permit in November 2012 and Combined Preliminary and Final Development Plan in February 2013 to allow the storage facility at this location. In addition, in February 2014 the Board of Zoning Appeals (BZA) approved a side yard setback variance to allow the construction of the proposed storage building expansion (Phase 2) within the eastern side yard setback while in April 2014 City Council approved the amended Conditional Use Permit and Development Plan Exemption for the expansion (Phase 2). Now the owner is proposing to expand to the southeast by installing 8 more storage units which are located 10 feet from the eastern and southern property lines respectively. The Planning Commission approved the Amended Conditional Use Permit and Development Plan Exemption on March 4 with City Council review on March 9 and 23.

### STAFF ANALYSIS

#### • VARIANCE:

- **Chapter 1143.04 Building Setback Requirements** – The required rear and side yard building setback is 50 feet when adjoining a residential district.
  - The proposed building is located 10 feet from the rear (southern) and side (eastern) property lines respectively.

- **VARIANCE REVIEW:** In considering whether or not a Variance shall be granted, the Board of Zoning Appeals is required to consider certain factors to determine if a practical difficulty exists. As listed below, Section 1128.09(c)(1) of the Planning & Zoning Code sets forth these factors. Following each factor in italics is a brief Staff analysis.

1. Whether the granting of the Variance would be in accord with the general purpose and intent of the regulations imposed by this Ordinance and the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.

*It appears the intent of the building setback variance between residential and commercial uses is to separate the uses while having enough room to provide the required buffer. The approved combined preliminary and final development plan required a six foot high wood fence (which has been installed) to achieve the City's screening requirements. In addition there are mature trees located on the residential side of the fence (likely in the alley right-of-way) and small pine trees located approximately 2 feet from the proposed building on the commercial side of the fence. When the pine trees mature, they should buffer the proposed 11 foot high building even more. Therefore, there currently is a fair amount of screening*

*that achieves compliance with the zoning code which appears would screen the proposed building unless there is significant opposition from the adjacent residents. In addition, the view from the residents would be the rear of proposed building which would likely block any views of the overhead doors, wall pack lights and associated vehicular traffic and patron activity. To the south are railroad tracks which provide a wide buffer with existing trees to the residential homes south of the railroad tracks. Furthermore, the request could be considered significant (an 80% variance from 50 feet to 10 feet) but may not be detrimental to the adjacent residents based on the existing and additional screening noted above.*

2. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions.

*There is a 20 foot wide alley in City right-of-way between the residential properties and storage facility that in practicality increases the setback to 30 feet from the rear property line of the adjacent residential properties to the east. The majority of the mature trees described earlier appear to be located in the alley right-of-way. To the south is a 100 foot wide railroad track right-of-way which provides a man-made setback from the residential houses to the south.*

3. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the Variance. Mere loss in value or financial disadvantage to the property owner does not constitute conclusive proof of practical difficulty; there shall be deprivation of beneficial use of land.

*The storage facility was constructed in 2013 and expanded in 2014 and will continue to be used as such with or without approval of this Variance.*

4. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the Variance.

*The character of the neighborhood would not likely be "substantially altered" nor would the "adjoining properties likely suffer substantial detriment" as a result of the Variance unless there is significant opposition from the adjacent residents that has not been expressed to staff yet.*

5. Whether the Variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup.

*The delivery of governmental services, particularly emergency services, would not be impacted with approval of this Variance.*

6. Whether the property owner purchased the property with knowledge of the zoning restrictions. Purchase without knowledge of restrictions in itself is not sufficient proof of practical difficulty.

*The owner was aware of the setback requirements when discussing the zoning requirements with staff during the combined preliminary and final development plans process in 2013 and the expansion requests in 2014 and 2015.*

7. Whether special conditions or circumstances exist as a result of actions of the owner.

*There do not appear to be any special conditions or circumstances that have occurred because of the actions of the owner.*

8. Whether the property owner's predicament feasibly can be obviated through some method other than a Variance.

*The site is almost completely built out with the existing storage facility and there does not appear to be another place on the site to construct the proposed building addition without requesting a variance.*

9. Whether there is evidence of Variances granted under similar circumstances.

*Staff could not find a similar request for several years in the City except for the subject variance for Phase 2 of this project in 2014.*

10. Whether the granting of the Variance is necessary for the reasonable use of the land or building, and the Variance as granted is the minimum Variance that will accomplish that purpose.

*The property is currently zoned and approved for a storage facility as constructed and will continue to be used as such with or without approval of this Variance. As a result, a Variance is not necessary for the reasonable use of the land.*

11. Whether the proposed Variance would impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values of the adjacent area.

*The variance would not likely have a negative impact on any of the above items except maybe having a positive impact on the adjacent residents by screening some of the activity on the site which includes lights, vehicular traffic, and patron activities.*

12. Whether the granting of the Variance requested would confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.

*If the Board finds that the standards for approval of a Variance are met then no special privilege is granted.*

## CONCLUSION

Although the proposed building addition does not comply with the minimum requirements of the zoning code, staff can justify the request for the following reasons (if the adjacent neighbors are not significantly opposed since they would be the most directly impacted): 1. The existing screening with a 6 foot high wood fence with pines trees and the large mature trees provides a buffer that meets the intent of the zoning code; 2. The proposed building would likely screen some of the daily activity of the storage facility which includes vehicular traffic, patron activities and lights and noise; 3. The 20 foot wide alley contains large mature trees and is not counted toward the property setbacks but in practically creates an additional 20 feet of buffer between the uses and it practically reduces the setback variance request from 40 feet to 20 feet; 4. The railroad track has a 100 foot right-of-way with mature trees that appears to provide an appropriate buffer to the residential homes to the south.

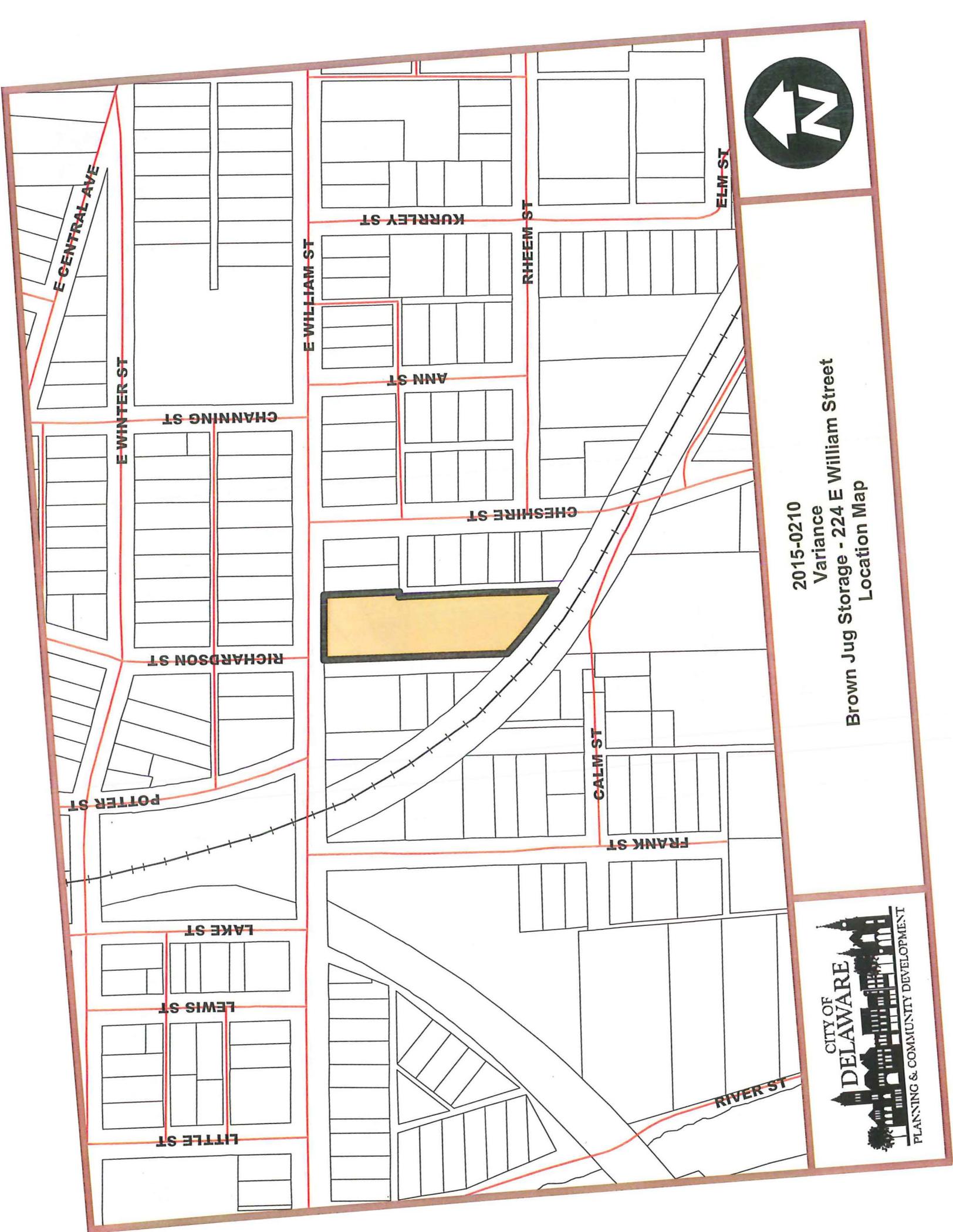
---

## STAFF RECOMMENDATION – VARIANCE (2015--0210)

Staff recommends a request by Brown Jug Storage for approval to allow the construction of a storage unit building within the required rear and side yard building setback of 50 feet when adjoining a residential district per Chapter 1143.04 Building Setback Requirements at 224 East William Street, with the following conditions that:

1. The existing pine trees located just east of the proposed building shall be preserved during construction or replaced with the same size trees in as close to the same location as possible if removed or damaged.
  2. The existing 6 foot high wood privacy fence shall be extended further south to buffer the proposed storage building from the residential houses to the east.
  3. The proposed building shall match the existing building in construction materials, design and color.
  4. The wall pack fixtures and illumination shall be reviewed and approved by Chief Building Official and shall be shielded not to illuminate on adjacent residential properties.
  5. The mechanical entrance gate shall be installed and operational prior to building occupancy approval of this addition.
  6. No outdoor advertisement of items for sale shall be allowed.
  7. No temporary signage shall be allowed.
-





2015-0210  
Variance  
Brown Jug Storage - 224 E William Street  
Location Map



E CENTRAL AVE

E WINTER ST

CHANNING ST

RICHARDSON ST

POTTER ST

LAKE ST

LEWIS ST

LITTLE ST

E WILLIAM ST

KURRLEY ST

ANN ST

CHESHIRE ST

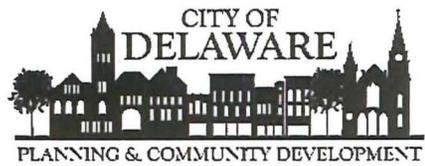
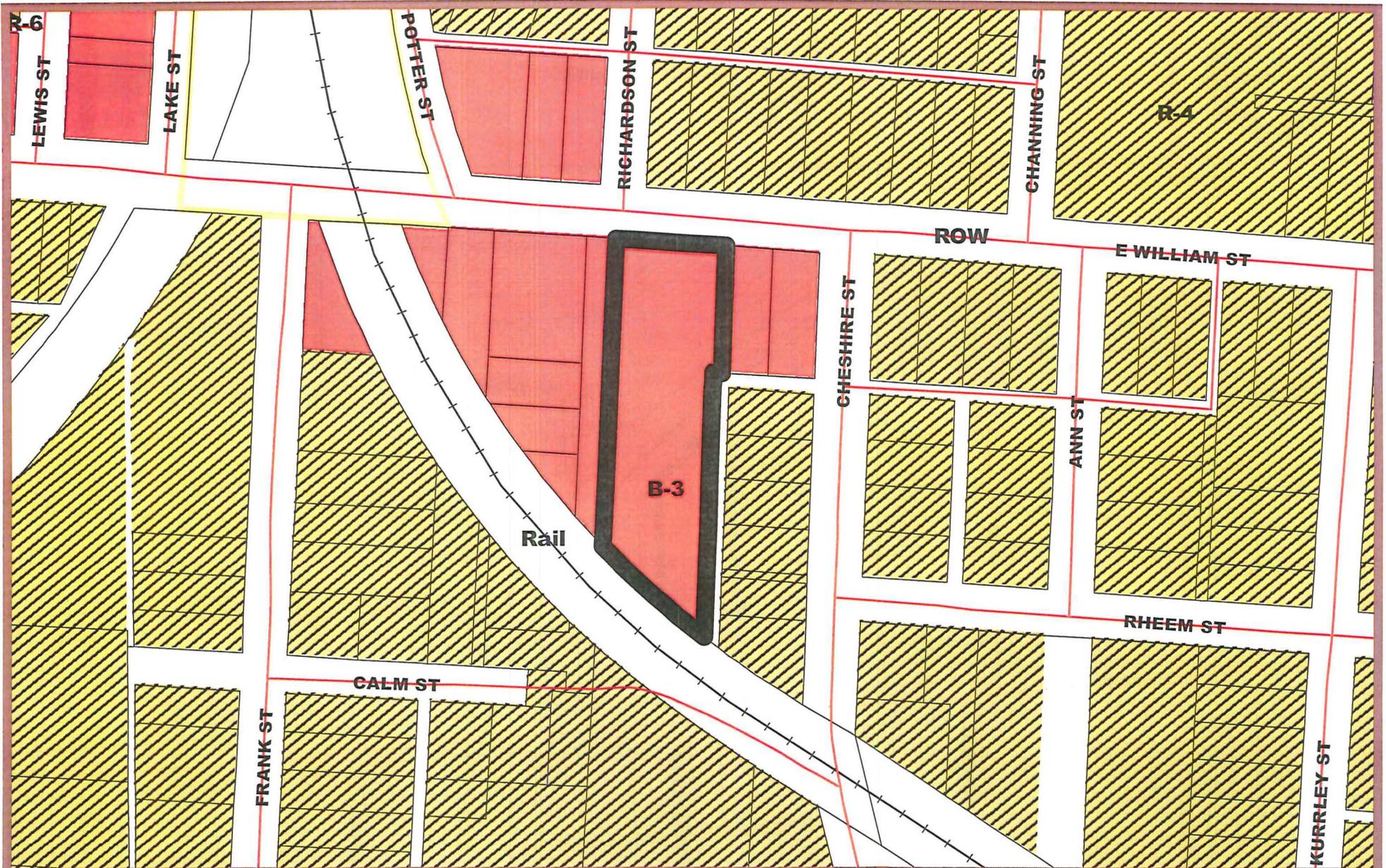
RHEEM ST

ELM ST

CALM ST

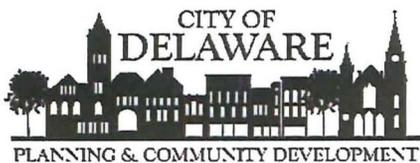
FRANK ST

RIVER ST



2015-0210  
Variance  
Brown Jug Storage - 224 E William Street  
Zoning Map

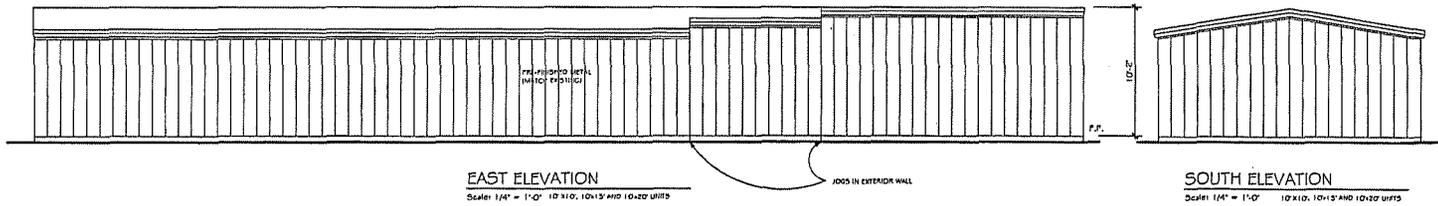
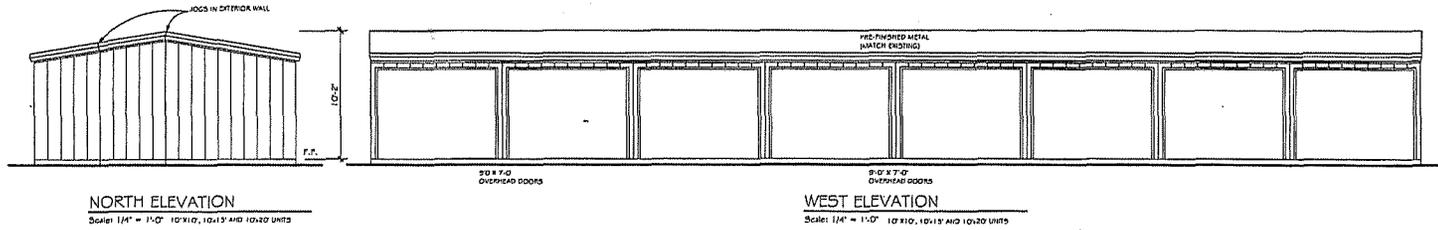
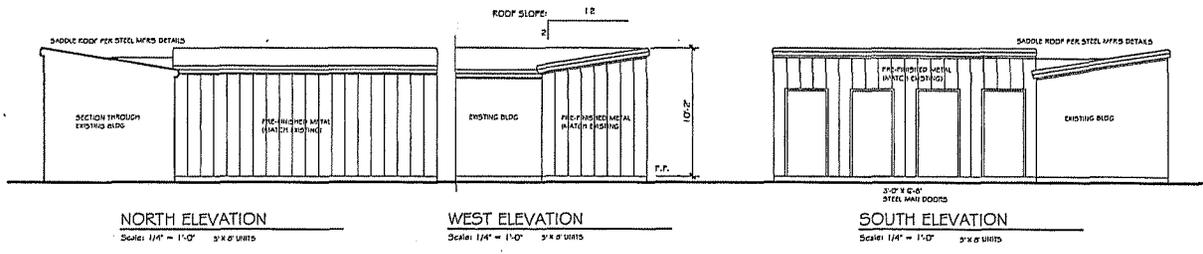




2015-0210  
Variance  
Brown Jug Storage - 224 E William Street  
Aerial (2013)







Manley Architecture Group LLC  
220 W. Main St.  
Columbus, OH 43215  
Professional Seal No. 0010144-100



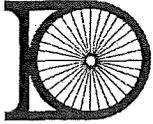
PATRICK WILLIAM MANLEY  
LICENSE # 7992  
EXPIRATION DATE 12/31/15

Brown Jug Storage  
Phase 3  
224 E. William St.  
Delaware, Ohio 43015

Date	Description
	Revision
	Manley Architecture Group LLC PH 3 CD'S V0016.V001
	02/20/14 PJM Date
	Drawing Code

Elevations

A-1



**CITY OF DELAWARE, OHIO  
PLANNING & COMMUNITY DEVELOPMENT  
MASTER APPLICATION FORM**



Project # \_\_\_\_\_

Case # 2015 - 0210

**Planning Commission**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Amended Final Development Plan                      | <input type="checkbox"/> Final Development Plan Extension | <input type="checkbox"/> Substitution of a Non-Conforming Use             |
| <input type="checkbox"/> Amended Final Subdivision Plat                      | <input type="checkbox"/> Final Subdivision Plat           | <input type="checkbox"/> Vacation-Alley                                   |
| <input type="checkbox"/> Amended Preliminary Development Plan                | <input type="checkbox"/> Final Subdivision Plat Extension | <input type="checkbox"/> Vacation-Easement                                |
| <input type="checkbox"/> Amended Preliminary Subdivision Plat                | <input type="checkbox"/> Floodplain Permit                | <input type="checkbox"/> Vacation-Street                                  |
| <input type="checkbox"/> Annexation Review                                   | <input type="checkbox"/> Lot Split                        | <b>Board of Zoning Appeals</b>  |
| <input type="checkbox"/> Combined Preliminary & Final Development Plan       | <input type="checkbox"/> Pre-annexation Agreement         | <input type="checkbox"/> Appeal Administrative Decision or Interpretation |
| <input type="checkbox"/> Comprehensive Plan Amendment                        | <input type="checkbox"/> Preliminary Development Plan     | <input type="checkbox"/> Conditional Use Permit                           |
| <input type="checkbox"/> Concept Plan  | <input type="checkbox"/> Preliminary Dev Plan Extension   | <input type="checkbox"/> Substitution of Equal or Less Non-Conforming Use |
| <input checked="" type="checkbox"/> Conditional Use Permit <u>500.00</u>     | <input type="checkbox"/> Preliminary Sub Plat             | <input checked="" type="checkbox"/> Variance <u>300.00</u>                |
| <input type="checkbox"/> Determination of Similar Use                        | <input type="checkbox"/> Preliminary Sub Plat Extension   |   |
| <input checked="" type="checkbox"/> Development Plan Exemption <u>500.00</u> | <input type="checkbox"/> Rezoning                         |   |
| <input type="checkbox"/> Final Development Plan                              | <input type="checkbox"/> Subdivision Variance             |   |

Subdivision/Project Name Brown Jug Storage (Phase 3) Address 224 E. Williams St.

Acreage \_\_\_\_\_ Square Footage \_\_\_\_\_ Number of Lots \_\_\_\_\_ Number of Units \_\_\_\_\_

Zoning District/Land Use \_\_\_\_\_ Proposed Zoning/Land Use \_\_\_\_\_ Parcel # \_\_\_\_\_

Applicant Name Brown Jug Storage Contact Person Jim MANOS

Applicant Address 224 E. Williams St. Delaware, Oh 43015

Phone (614) 562-2421 Fax (877) 326-1262 E-mail JMANOS@columbus.rr.com

Owner Name Jim MANOS Contact Person Jim MANOS

Owner Address 5973 Macewen Ct. Dublin, Oh 43017

Phone (614) 562-2421 Fax (877) 326-1262 E-mail JMANOS@columbus.rr.com

Engineer/Architect/Attorney Pat Mawley Contact Person Pat Mawley

Address 3820 North High St, Columbus, Oh 43214

Phone (614) 496-9096 Fax N/A E-mail patm@manleyarchitects.us

The undersigned, do hereby verify the truth and correctness of all facts and information presented with this application and authorize field inspections by City Staff.

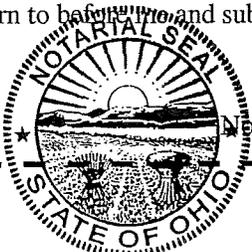
[Signature]  
Owner Signature

JAMES P. MANOS  
Owner Printed Name

Agent Signature

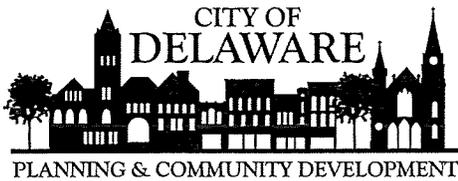
Agent Printed Name

Sworn to before me and subscribed in my presence this 9th day of February, 2015.



**Thomas Jagels**  
Notary Public, State of Ohio  
My Commission Expires 09/20/2016

[Signature]  
Notary Public



## BOARD OF ZONING APPEALS / STAFF REPORT

CASE NUMBERS: 2015-0213

REQUEST: Appeal to an Administrative Decision

PROJECT: 15 Flax Street

MEETING DATE: March 11, 2015

### APPLICANT/OWNER

Yoav and Schlomo Botach  
5011 W. Pico Boulevard  
Los Angeles, CA 90019

David Gordon  
82 North Franklin Street  
Delaware, OH 43015

### REQUEST

2015-0213: A request by Yoav and Schlomo Botach to appeal an administrative decision by the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code.

### PROPERTY LOCATION & DESCRIPTION

The subject 3.62 acre parcel is located on the north side of Flax Street just northwest of Milo Street. The subject property is zoned M-1 (Light Manufacturing District). The zoning to the north across the river is R-3 (One-Family Residential District), to the south the zoning is B-3 (Commercial Business District), to the east the zoning is R-4 (Medium Density Residential District) and R-6 (Multi-Family Residential District), to the west across the river the zoning is B-2 (Central Business District).

### BACKGROUND

The subject property and buildings have had several violation notices the last 5 years (see attached) or so to repair and secure the building and to mow or remove rubbish and garbage from the site. None of the building improvements have been made and City services have been and continue to be burdened with securing the structures and mowing violations. In addition, the vacancy and state of disrepair of the building(s) and property has become a nuisance and danger to the neighborhood and City. The City Police Department has 59 documented police reports at this property since 2010 (see attached). Therefore the City had no recourse but to write a Condemnation/Demolition Notice on March 11, 2014 (see attached) based on the City adopted 2000 International Property Maintenance Code for the subject property and buildings to ensure the health, safety and general welfare of the City. The owner is appealing the Condemnation/Demolition Notice to the Board of Zoning Appeal per the City Codified Ordinances and the 2000 International Property Maintenance Code. The owner's attorney have supplied a written response to each violation (see attached).

### STAFF ANALYSIS

#### • MEANS OF APPEAL – 2000 International Property Maintenance Code

- **Section 111.1: Application of Appeal.** Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.
  - *Although the deadline to appeal this case was technically April 15, 2014 per the letter dated March 11, 2014 per the City Code Official The applicant has filed an appeal for this case only just recently. A potential reason for denying this appeal (and upholding the decision and order of the Code Official) is the failure of the applicant to seek an appeal within the required timeframe.*

#### • VIOLATIONS – 2000 International Property Maintenance Code

- The subject property and buildings do not achieve compliance with Section 108 Unsafe Structures and Equipment, Section 110 Demolition, Section 301 General Requirements and Section 501 Plumbing Facilities and Fixture Requirements of the City adopted 2000 International Property Maintenance Code. The subject property and buildings have the following specific 15 property violations in the above four sections of the 2000 International Property Maintenance Code as documented in the Code Official's notice and reproduced (in part) herein:

1. **Section 108.1 Unsafe Structures and Equipment.** When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code
2. **Section 108.1.1: Unsafe structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.
  - *This structure is found to be unsafe and dangerous to the life, health or safety of the public due to its decay and dilapidation. The buildings lack minimum safe guards by not providing lighting or emergency lighting within the structures, heating or ventilation, running hot and cold water, operable bathroom facilities.*
3. **Section 108.1.3: A structure is unfit for Human Occupancy.** Whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
  - *This structure is unfit for human occupancy by not providing adequate ventilation, illumination, sanitary or heating facilities or other essential equipment. No lighting or emergency lighting is in the buildings and the structures are unlawful due to the lack of repairs.*
4. **Section 108.2: Closing of vacant structures.** If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resources.
  - *The structures were condemned as of March 11, 2014 and may not be occupied until all violations of the City adopted 2000 International Property Maintenance Code achieve compliance.*
5. **Section 110.01: Demolition General:** The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.
  - *The buildings are so out of disrepair it is in the Code Officials judgment that they are unreasonable to repair, and if the owner feels the structures can be made safe and habitable and in compliance with the Building Codes of Ohio and the City adopted 2000 International Property Maintenance Code, then the owner may make the buildings safe and habitable. Building Permits are required and Plans must be prepared by design professionals registered in Ohio. The structures were required to be made compliant by April 15, 2014.*
6. **Section 301.2: General Responsibility.** The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit or premises which they occupy and control.

7. **Section 303.1: Exterior Structure General.** The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.
  - *This property poses a threat to the public welfare by becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building need to be removed or replaced. All exposed bare wood must be primed and painted.*
8. **Section 303.2: Protective Treatment.** All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.
  - *The loose and peeling paint needs to be scraped on the exterior siding, overhangs, fascia, windows and doors, all bare wood and metal needs to be primed, the outside of the buildings need to be painted to prevent further decay, and the all the work needs to be completed in a lead safe manner.*
9. **Section 303.4: Structural Members.** All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.
10. **Section 303.5: Foundation Walls.** All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.
  - *The stone foundation and walls need to be tuck pointed to prevent the entry of water.*
11. **Section 303.6: Exterior Walls.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.
  - *The deteriorated cornices, box beams, fascia and siding on the structures need to be repaired and/or replaced. Remove all holes or cover with new siding to prevent water infiltration and rodents.*
12. **Section 303.11: Chimneys and towers.** All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.
  - *The chimney that deteriorated and fell off of the roof needs to be rebuilt and repair the roof area around the chimney and check chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound.*
13. **Section 303.13: Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.
  - *Replace all broken panes of glass in windows and doors, repair window sashes/frames and jambs, make operable windows and doors, and use proper glazing and paint jambs and sashes to protect from weather.*
14. **Section 304.3: Interior Surfaces.** All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

- *All loose and peeling paint from the inside of the building needs to be removed. All holes where the plaster has broken loose from the lath need to be repaired. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.*
15. **Section 505.1: Water Systems General.** Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.
- *Water and hot or tempered water must be provided to all of the plumbing fixtures.*

#### DECISION CRITERIA

Section 111.1 of the 2000 International Property Maintenance Code provides four elements upon which the BZA should base any decision on. Staff recommends a clear and concise consideration of each by the BZA so that there decision is well documented. To that end, staff provides each element below with staff's conclusion for each. Ultimately, the BZA must decide individually and then collectively its conclusion to these elements.

1. The intent of this code or the rules legally adopted thereunder have been incorrectly interpreted.
  - a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the Code Official acted within the intent of the Property Maintenance Code and that the Code Official has correctly interpreted them. The entirety of the Property Maintenance code is premised upon the preservation of the general public health, safety, and welfare both on the property itself and as it may impact property and individuals off property. The evidence clearly indicates that this property was and continues to be an attractive nuisance as the Police Report runs clearly demonstrate in addition to the violations themselves. The applicants have not provided evidence adequately addressing these issues over the course of multiple years. The applicants failed to address these issues within the prescribed time frame outlined in the Code and in the latest notice of violation and they failed to avail themselves of the opportunity to appeal the decision within the prescribed time frame. Section 110.3 *Failure to comply* indicates that if an owner of a premises fails to comply with a demolition order within the prescribed time frame the code official shall cause the structure to be demolished and removed. This is what the order of the Code Official indicates and the record clearly shows failure of the applicants to comply including seeking an appeal within the allotted time frame.
2. The provisions of this code do not fully apply.
  - a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the provisions of the Property Maintenance Code apply to this property as they do to any other property within the City of Delaware. The Property Maintenance Code was legally adopted and does not conflict with the provisions of the Ohio Revised Code as noted in the Code Official's response (dated 2/24/2015) to the applicant's appeal. The Code Official has pursued the process and procedures outlined within the Property Maintenance Code adopted by the City and as applicable by Section 102.1 of that code to this property where it indicates that the provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern. Finally, the code official did not pursue enforcement under provisions contained with the Ohio Revised Code or the State of Ohio Building Code for property maintenance and thus these are not germane to this action or this appeal.

3. The requirements of this code are satisfied by other means.
  - a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that the requirements of this code cannot be adequately satisfied by other means. The Property Maintenance Code was legally adopted and does not conflict with the provisions of the Ohio Revised Code as noted in the Code Official's response (dated 2/24/2015) to the applicant's appeal. The Code Official has pursued the process and procedures outlined within the Property Maintenance Code adopted by the City and as applicable by Section 102.1 of that code to this property. The code official did not pursue enforcement under provisions contained with the Ohio Revised Code or the State of Ohio Building Code for property maintenance and thus these are not germane to this action or this appeal.
  
4. The strict application of any requirement of this code would cause an undue hardship.
  - a. Staff finds beyond a reasonable doubt that the evidence presented clearly demonstrates that strict application of this code would not cause an undue hardship. The Code Official's response (dated 2/24/2015) to the applicant's appeal specifically addresses this issue adequately. Additionally, the applicant has provided no evidence, other than an assertion of hardship, that a true hardship exists either monetarily or for other reasons. A simple internet search of publically available information reveals that the applicants have robust financial means at their disposal which could potentially be used to address the violations. The issues have been long standing and thus the applicants have literally had years to adequately address these issues and they have failed to do so. Finally, if a hardship truly existed the applicants could have sought, and never did, an appeal to any one of the numerous orders issued including the most recent one which they failed to appeal within the prescribed time frame.

#### **CONCLUSION**

Staff supports the Code Officials decision requiring condemnation/demolition of the buildings for the following reasons: 1.The property and buildings have 15 specific violations of the City adopted 2000 International Property Maintenance Code in the last five years; 2. The City has worked with the owner for five years to mitigate the violations without any success; 3. The property and buildings has become an attractive nuisance and dangerous to the neighborhood and City because the City Police Department have 59 documented police reports at this property since 2010; 4. The general health, safety and welfare of the neighborhood and City is at risk without the condemnation/demolition and removal the structures on this site.

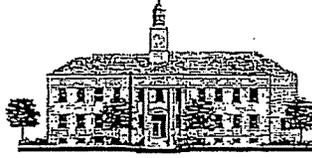
---

#### **STAFF RECOMMENDATION – APPEAL OF ADMINSTRATIVE DECISION (2015--0213)**

Staff recommends approval of the decision of the code official requiring the condemnation/demolition of 15 Flax Street on approximately 3.61 acres zoned M-1 (Light Manufacturing District) under the 2000 International Property Maintenance Code and therefor the denial of this application based upon the evidence presented and the decision criteria.

---





CITY OF DELAWARE

Wednesday, March 11, 2014

Yoav & Schlomo Botach  
5011 W Pico Blvd.  
Los Angeles CA 90019

Re. Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnations/ Demolition notice.

Dear Mr. Yoav & Schlomo Botach:

For the past 4-5 years the City has sent you several notices to repair, secure, mow or remove rubbish and garbage from the above referenced property. No improvements have been made and our City Services continue to be burdened with mowing violations, securing the structures, and dispatching our Police Department to chase off juveniles/vandals.

Vacant structures such as yours are an attractive nuisance and are a higher risk of fire and for illegal activity to occur within them. The blight caused by the lack of maintenance and deterioration devalued the structures and the surrounding properties.

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

***This structure is found to be unsafe and dangerous to the life, health or safety of the public due to its decay and dilapidation. The buildings lack minimum safe guards by not providing lighting or emergency lighting within the structures, heating or ventilation, running hot and cold water, operable bathroom facilities.***

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required



CITY OF DELAWARE

by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

***This structure is unfit for Human Occupancy by not provided adequate ventilation, illumination, sanitary or heating facilities or other essential equipment. No lighting or emergency lighting is in the buildings, the structures are unlawful due to the lack of repairs.***

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate abs may be collected by any other legal resources.

***The structures are condemned as of the writing of this letter and may not be occupied until all violations of the City's adopted Property Maintenance Code are complied with.***

PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.

***The buildings are so out of disrepair it is in the Code Officials judgment that they are unreasonable to repair, if you as the owner feel the structures can be made safe and habitable and in compliance with the Building Codes of Ohio and the City's adopted Property Maintenance Code, then you may make safe and habitable the buildings. Building Permits are required and Plans must be prepared by design professionals registered in Ohio. The structures must be made compliant by April 15, 2014.***

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

***This property poses a threat to the public welfare buy becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building need to be removed or replaced. All exposed bare wood must be primed and painted.***

PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.



CITY OF DELAWARE

Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

***Scrape the loose and peeling paint on the exterior siding, overhangs, fascia, windows and doors, primer all bare wood and metal, paint the outside of the buildings to prevent further decay, work in a lead safe manner.***

PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.

***Tuck point the stone foundation and stone walls to prevent the entry of water.***

PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

***Repair and replace the deteriorated cornices, box beams, fascia and siding on the structures. Remove all holes or cover with new siding to prevent water infiltration and rodents.***

PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

***Check chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound. Rebuild chimney that deteriorated and fell off of the roof and repair the roof area around the chimney.***

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

***Replace all broken panes of glass in windows and doors, repair window sashes/frames and jambs, make operable windows and doors, and use proper glazing and paint jambs and sashes***



CITY OF DELAWARE

*to protect from weather.*

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

***Remove all loose and peeling paint from the inside of the building. Repair all holes where the plaster has broken loose from the lath. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.***

PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

***Water and hot or tempered water must be provided to all of the plumbing fixtures.***

PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

***All of the structures must be repaired and made into compliance with the minimum standards of the City's Property Maintenance Code by April 15, 2014; failure to comply will result in the City removing the structures. All salvage rights will be at the discretion of the City.***

Should you have questions, I may be reached at 740-203-1651.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jerry Warner".

Jerry Warner, C.B.O.  
Chief Building Official and Code Enforcement Officer



CITY OF DELAWARE

3/27/2014

Yoav & Schlomo Botach  
5011 W Pico Blvd.  
Los Angeles CA 90019

Re. Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnations/ Demolition notice.

Dear Mr. Yoav & Schlomo Botach:

Mr. Botach, we talked Monday 3/24/14 about the violation notice dated 3/11/14 that you received. You requested that I work with you and your representative Raymond Bahrami. I reluctantly agreed, due to our past history of promises made and broken with no repairs made or improvements to the property.

You stated your representative Raymond was to walk through the buildings with a contractor on Tuesday or Wednesday of this week to look at the scope of work necessary to bring all of the structures into compliance with the City's adopted property codes. I requested that you give Mr. Bahrami my cell phone number and that he contact me so that I could meet with them at the site and define the scope as to what needed to be done. I was not notified of a meeting and once again another broken promise, it is now my understanding Raymond is out of the country until June. I have decided to move forward with my intentions to demolish the buildings as I stated in our conversation. This is due to the continued lack of follow through and action on your part as he owner. These structures are attractive nuisances, they are areas of drug activities, they are an unsecured fire risk, and other potential illegal activities.

All Structures must be repaired by April 15, 2014 with proper architectural drawings and permits or an appeal filed within 20 days or by April 12<sup>th</sup>. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Should you have questions, I may be reached at 740-203-1651.

Respectfully,

  
Jerry Warner  
Chief Building Official  
Code Enforcement Officer



CITY OF DELAWARE

Friday, October 24, 2014

Yoav & Schlomo Botach  
5011 W. Pico Blvd.  
Los Angeles, CA 90019

RE: Violations of 1303.01 of the adopted 2000 International Property Maintenance Code, 15 Flax St., Condemnation/Demolition Notice.

Dear Mr. Yoav & Schlomo Botach:

Per our agreement on March 24, 2014 I was to meet Mr. Rahman Bahrami on his return to the states in May of 2014. During our meeting, we were to discuss items that needed to be remedied to bring the structures into compliance with the City's Property Maintenance Code on or by July of 2014. The only persons I have spoken to is Mrs. Bahrami on 4/1/14, who explained that when her husband returned we would discuss the issues, but that in the meantime the buildings would be secured. I also spoke with your attorney, Mr. Romain who confirmed Mrs. Bahrami's statements I was to meet Mr. Bahrami when he returned and she was getting the buildings secured, I never heard from Mr. Bahrami..

The buildings were secured in April as Mrs. Bahrami had promised, shortly thereafter, they were broken into again; the structures are no longer secured. You have been sent notices over the past several years, and two this year with no attempts to repair the buildings, in each notice you were given your right to appeal and each notice you waived that right.

With the above said, I am moving forward with the appropriation of funds to raze the buildings, there will be no further notices to repair the structures only notices to mow the field, the City assumes all salvage rights. The demolition will or may be over a period of time, you will be billed accordingly, if the bills are not paid, the cost will be placed as a lien on the property.

Should you have questions, please have your attorney Mr. Stanley Romain contact me directly, I may be reached at 740-203-1651.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jerry Warner".

Jerry Warner, C.B.O.  
Chief Building Official and Code Enforcement Officer

Cc. Stanley R. Romain, Esquire



CITY OF DELAWARE

Wednesday, February 24, 2015

Dave and Scott Gordon  
82 N. Franklin St.  
Delaware, Ohio 43015

Re: Response to your 15 Flax St. Appeal Application received Monday, February 9, 2015

Each subject item is responded to in their respectful order, each response is in italic.

- 1) The Owners believe that the Code sections referenced and alleged to have been violated do not fully apply to the Property; that the true intent of the Code sections have been misinterpreted in this instance; the requirements of these Code sections are adequately satisfied by other means than those sought by City officials; and strict application of the Code sections referenced certainly would cause undue hardship upon the Owners and make strict adherence to such Code sections economically unfeasible.

*The City believes the code has been properly enforced and interpreted correctly, that the ongoing intentional neglect of the property has created a self-inflicted hardship. The owner has been notified over past years of the condition and necessary repairs needed to the structures and has simply failed to do anything. Mr. Botach lives in Beverly Hills, according to court records, Mr. Botach co-owns 144 commercial and other properties in Los Angeles, as well as Botach Tactical, a nationwide distributor of police and military equipment. Mr. Botach's net worth is estimated \$700 million. The City does not believe that repairing the buildings is an undue hardship for Mr. Botach, simply a choice.*

- 2) The Notice references the common address of "15 Flax St." and indicates an intention to condemn and demolish the structure located at that address. However, further communication with Mr. Warner indicated the City's intention to condemn and demolish other structures not commonly referred to as "15 Flax St." Instead, there is an additional structure located on the Property commonly known as "1 Flax St." and a third structure – a metal building on the north end of the Property, which bears no common street address. Therefore, the Owners respectfully submit that the Notice fails to properly put them on



CITY OF DELAWARE

notice of the City's intention to condemn and demolish all three (3) structures located on the Property. This belief is supported because the sole reference to any particular address within the Notice is "15 Flax St." and all alleged violations included within said Notice reference only the one structure commonly referred to as "15 Flax St."

*The notice sent and dated March 11, 2014 regarding 15 Flax St., speaks about structures (plural) meaning more than one. Mr. Yoav Botach, the owner and his representative Mr. Raymond Bahrami understood that the three structure(s) had to be secured and repaired. That understanding was documented in a letter to Yoav and Schlomo Botach, dated 3/27/04 from Mr. Warner. The Delaware County Auditor recognizes the property as 15 Flax St., which is the legal address. There are four (4) address points in the Auditor's Geographical Information System on that property; one on the old stone structure and three on what is being called 1 Flax St., and believed to be the apartment that was abandoned, each point is shown as 15 Flax St. and the property is recognized by one Parcel number of 51943128075000. The structure in the rear of the property that has no point address is one of the Structure(s) noted and included in the violation notice. There has been no misunderstanding as to the scope of work until Mr. Botach hired a new consultant, Mr. Behzad Vedaie, from the Innovative Engineering Group, who is attempting to find an innovative way for his client to get out of his responsibility.*

3) Further, the Owners hereby give Notice that they do not believe the City of Delaware Board of Zoning Appeals is the proper and appropriate Board to hear this Appeal. By the City of Delaware's own Ordinances, the 2000 International Property Maintenance Code Sections 111.1 and 111.2, which was adopted by the City of Delaware by City on October 27, 1997 and incorporated by City Ordinance §1303.01, mandates that any appeal of a decision, notice, or order of the code official be appealed to the Board of Appeals, ie: the Board of Building Appeals.

However, although the City of Delaware has created a Board of Building Appeals, there are no current appointments to said Board and said Board does not comply with the mandated standards imposed by Property Maintenance Code (hereinafter "PM Code") Sections 111.2.1 through 111.2.5.

*The current Delaware Codified Ordinance 1303.1, and International Code Council's (ICC) International Property Maintenance Code (IPMC)-2000, states that appeals must be made to the Board of Appeals, not ie: "Board of Building Appeals". The City's Board of Zoning Appeals*



CITY OF DELAWARE

*hears appeals regarding interpretation or enforcement of, Zoning Codes, the Property Maintenance Code and the Residential Code of Ohio, which is customary in many Ohio Municipalities. The City's Board of Building Appeals was repealed in the late 1990's.*

- 4) The Owners further submit that any appeal of a decision, order, or notice by the City of Delaware's code enforcement official which directly involves condemnation and/or demolition of real property shall be appealed to the State Board of Building Appeals, pursuant to Ohio Revised Code §3781.19 and §3781.20.

The City of Delaware nor Delaware County, Ohio have Boards of Building Appeals which are certified by the State Board of Building Appeals. Additionally, by adopting the 2000 International Property Maintenance Code, in total, some sections of the PM Code - specifically those regarding condemnation and/or demolition of structures - are in direct conflict with the Ohio Building Code, and, therefore, unlawful as provided by R.C. §3781.01.

*The State Board of Building Appeals pursuant to 3781.19 and 3781.20 only hears cases to the enforcement of Chapters 3781 & 3791 of the ORC.*

*The Notice of Violation was written under the purview of a locally adopted national property maintenance code; this code has its own appeals process. If the code official was acting as a Certified Building Official and had written an Adjudication to enforce Chapters 3781 and 3791 of the Revised Code the owner would then appealed to the State Board of Building Appeals.*

*There is no conflict between the adopted property maintenance code and the Ohio Revised Code. See the below Ohio Building Code, Section 102.2 and Ohio's commentary that follows to help explain.*

*102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of state or federal law. Municipal corporations may make further and additional regulations, not in conflict with Chapters 3781 and 3791 of the Revised Code or with the rules of the board of building standards. However approval by the board of building standards of any fixture, device, material, system, assembly or product of a manufacturing process, or method or manner of construction or installation shall constitute approval for their use anywhere in Ohio.*

*Confusion has also occurred in determining to what extent municipal corporations may make additions or alterations to the Ohio Building Code. The Ohio Revised Code (ORC), in section 3781.01, specifies that municipalities may make further and additional regulations not in conflict*



CITY OF DELAWARE

*with the rules and regulations of the Board of Building Standards. The conflict "test" was established in Village of Struthers vs. Sokol, 108 Ohio St. 263 (1923). The Sokol test is stated correctly as: "A conflict exists when the local ordinance permits or licenses that which the statute forbids and prohibits, or when the statute permits or licenses that which the local ordinance forbids and prohibits." Therefore, the answer to the question of the degree to which changes can be made is answered in the court's definition of a conflict. Many cities have addressed issues in their local ordinances without creating a conflict. Municipalities have established subsidence (landslide prevention) requirements, surface water and gutter/downspout sizing requirements based upon local rainfall data, snow loading requirements, demolition requirements, wind loading requirements, foundation requirements for frost depth, establishment of fees, determining inspection schedules that are not in conflict with the rules of the Board – the OBC.*

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Specifically, the Owners contest the determination that the Property is not in compliance with the PM Code, as will be explained below. The Owners submit that PM Code 108.1 is in direct conflict with the Ohio Building Code §109.4, and, therefore, any determination that a structure is condemned or unsafe must be done so in strict compliance with the Ohio Building Code and may be appealed to, in this case, the Ohio Board of Building Appeals. The Owners submit that the structure located at 15 Flax Street is no danger to the public, nor does it lack minimum safeguards for its current use. The structure is not unsafe nor does it have an unstable foundation or in any danger of falling down or collapsing.

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

*I refer back to the previous response above and add that after speaking with the Staff of the Board of Building Standards they too agree that the orders were written under local ordinance and not enforcing Chapter 3781 & 3791 of the Revised Code. Therefore no appeal can be made to the State Board of Building Appeals. If the Building Official had enforced the Ohio Building Code, Section 109.4, 111.1 & 111.4, the owner had lost their right to an appeal after 30 days or*



CITY OF DELAWARE

*April 24, 2014. The state of Ohio would not have offered to extend another opportunity for an appeal.*

*The Ohio Building Code is equal to or more restrictive than the City's Adopted Property Maintenance Code. In Ohio, the structure and its service equipment shall be maintained in accordance with its approval. Section 111.1, OBC applies whether the building is occupied or not.*

*If Section 109.4 OBC was cited due to the unsanitary conditions, lack of light and ventilation, in adequate means of egress, or are otherwise dangerous to human life, shall be deemed a serious hazard. Where a building is found to be a serious hazard, such hazard shall be eliminated or the building shall be vacated, and where such building, when vacated, remains a serious hazard, it shall be razed.*

The Owners submit that the structure located at 15 Flax Street is currently vacant and unoccupied, and therefore, not currently being used for Human Occupancy. Pursuant to PM Code 301.3 – Vacant structures and land:

All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Here, the Property is a "vacant structure" and therefore need only comply with PM Code 301.3. The allegations that the Property is not fit for Human Occupancy is irrelevant given the current use and state of the Property.

*We agree the property must comply with PM 301.3 or be razed. This section states the structures and premises shall be maintained as "provide herein". "Herein" refers to the remainder of the code's provisions. The code does not matter whether the building is occupied or vacant; it simply requires the structures to be maintained. If they are not maintained to the minimum standards the owner is not permitted to allow occupancy until the item(s) are in compliance. It does not permit an owner to allow a building to deteriorate whether he/she chooses to not allow it to be occupied or not. A building can set unoccupied at the owner's choice as long as it is maintained and ready for occupancy and it is secured.*

*The owner's argument supports the poor conditions of the properties due to the statement "the allegations that the property is not fit for human occupancy given the current use and state of the property". There is no current use due to the "state of the property".*

**PM-110.1:** The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.

As stated above, the Property is currently unoccupied and vacant. However, the Property nor any of the structures located thereon are in any danger of collapsing nor pose any other safety threat to the public. Further, the Chief Building Inspector was to abide by §109 of the Ohio Building Code if he determined that the Property, or any structure thereon, was a "serious hazard" or an "unsafe building".



CITY OF DELAWARE

*Again the Ohio Building Code does not apply. The buildings are dilapidated and have become so out of disrepair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy and as such is unreasonable to repair the structures.*

Additionally, the date which was included within the Notice of April 15, 2014, by which time the Owners were to comply with all of the Notice's requirements, was unreasonably close in time to the Notice's date of March 11, 2014. This date to remedy the alleged violations would have been impossible for the Owners to make all the necessary improvements to the Property as the Notice stated. Therefore, the Notice was not in compliance with PM Code Sections 107.1 and 107.2. Moreover, even assuming the alleged violations were found to be substantiated, the Notice failed to comply with the true intent of the Ohio Building Code Standard §109.1 by not providing a reasonable amount of time to remedy all of the alleged conditions.

The date in which the owner was to comply coincides with the required date of the appeal deadline, which the owner failed to respond to.

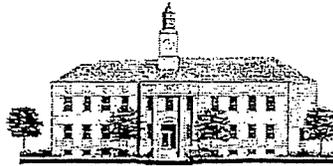
During that time between April 15, 2014 and March 11, 2014, the owner can either choose to appeal or make other arrangements with the code official. The owner choose to make other arrangements, this is supported in the Code Officials letter dated 3/27/2014 to Mr. Botach. In this letter he was again reminded of his right to an appeal and that his representative did not follow through. The notice was in compliance with Sections 107.2 & 107.3. Again the Ohio Building Code, Section 109.1 does not apply, and if all things being the same would have missed his appeal and would not be permitted by the State of Ohio to apply almost one year after the first notice.

**PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.**

The Owners disagree with the above stated assertion that the grounds of the Property were a threat to the public health, safety or welfare. A tall metal fence surrounds the northern most metal building upon the Property. Following the receipt of the Notice, the Owners instituted repairs to the Property to secure any and all doorways as best as

---

possible to deter potential trespassers' entry into the structures. Owners further replaced all window glass which was in danger of potentially falling out of window frames with plexi-glass. Lastly, the Owners had representatives visit the Property on a weekly basis to inspect the structures upon the Property for signs of any breaking and entering by trespassers. Additionally, the City's official complained of exposed bare wood needing to be freshly painted and the need to replace on structure's gutter: those circumstances can hardly be said to constitute a threat to the public's safety or health.



## CITY OF DELAWARE

The owner has no idea as to how secure the structure is, he admittedly has not seen it. There have been 52 police reports at the property known as 15 Flax St. in the past 4-years, it is constantly broken into. The owner did not replace any glass in the windows; sheets of glass were sitting in the window openings a month ago ready to fall out. The owner has no idea if anyone is looking at the property on a weekly base. The wood and gutters do need to be repaired and painted to prevent further deterioration of the building. The continued rotting of the wood and the water from the gutters has caused additional foundation problems on the southwest side of the stone building. Had the windows and other bare wood been painted maybe the glass wood have stayed in their openings. The lack of maintenance is causing the buildings to literally fall apart which is a public, health, and safety concern. The roof has at least 3 holes, of the three two have rooted structural supports which are collapsing and failing inside, this damage did not happen overnight.

**PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.**

Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

Again, PM Code 301.3 specifically provides the standard to which a vacant and used structure is to be held by the City of Delaware. The structures upon the Property pose no sanitary risks nor pose any danger of collapse to the public. So long as the structures upon the Property comply with PM Code 301.3, the additional alleged violations and their corresponding code sections do not apply to this circumstance and property. Nevertheless, the exterior walls of the structures upon the Property are in good repair, and the one particular wall which had been identified by the Chief Building Official in need of repair has, in fact, been repaired and finished.

The structures must be maintained per PM 301.3, whether the structure is vacant or not. The exterior and interior of a structure and equipment must be maintained. They are unsanitary and unsafe to occupancy due to their lack of maintenance. The exterior masonry wall was repaired approximately 2-months ago, keep in mind the appeal is on a letter that is almost one-year old.

**PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.**

**PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.**

The City's official stated in the Notice that tuck pointing some stone walls was necessary. However, such improvements and repairs, while potentially beneficial to the Owners and the Property, are not necessary to ensure the safety and structural integrity of the Property and the structures thereon. Furthermore, there are no signs of any water penetration through the foundation or structures' walls.



CITY OF DELAWARE

Structural member of the stone building are failing due to water infiltration. Areas in the other buildings where the ceilings and wall finish have fallen off due to water infiltration. We want the holes in the walls repaired to stop water infiltration and freeze thaw cycles from deteriorating the stone and brick structures. To allow this to continue is what caused the rear wall to almost fail. Had the City not written orders it is pretty apparent nothing would have been done and it would have collapsed. Maintenance of the buildings is necessary to ensure the safety and structural integrity of the property and structures thereon. Further there are signs of water infiltration into the building's west brick structure addition and this is causing severe deterioration of the wall.

**PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.**

As stated above, following the Notice the Owners had all broken glass which may have been in danger of falling from any window frame replaced with plexi-glass to eliminate the risk of a trespasser or lawful invitee from being hurt by any falling window glass.

The window openings and frames are not in good repair, weather tight and in sound condition and replaced with plexi-glass.

**PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.**

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

Code has been misinterpreted by owner. PM-304.1 does apply per Section PM-301.3

**PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.**

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

Code has been misinterpreted by owner. PM-505.1 applies due to PM-301.3, PM-304.1 equipment must be maintained per PM-501.2 whether building is occupied or not. The owner cannot permit the occupancy of a building that does not have the necessary sanitary facilities. But it is still the owner's responsibility to maintain them.



## CITY OF DELAWARE

The Owners submit that PM Code 111.1 is in direct conflict with terms of Ohio Building Code Standard 109 which provide, specifically, for the appellate process against a determination related to condemnation, demolition, or the need to raze a structure. Therefore, the procedure as provided within the Notice was unlawful and unenforceable given its direct conflict with the provisions of the Ohio Building Code and Ohio Revised Code §3781.01 *et seq.*

The alleged violations of the 2000 International Property Maintenance Code, as adopted by the City of Delaware, which actually apply to the Property and the structures thereon, have all been remedied as provided by Ohio law. The Property is currently in compliance with the laws of the State of Ohio and City of Delaware ordinances. The vacant and unoccupied, yet secured and safe structures upon the Property pose no threat to the public's safety nor health. The City of Delaware lacks the proper compliance and authority to institute and maintain an effort to condemn and demolish the structures upon the Property. The City's requested relief is improper due to its failure to follow the clearly expressed procedures found within the Ohio Revised Code and the Ohio Building Code.

Moreover, the City of Delaware Board of Zoning Appeals lacks the appropriate authority to hear any appeal of alleged violations of the Property Maintenance Code as PM Code Section 111 clearly provides. It is the Owners position that this appeal from the Notice should be heard by the Ohio State Board of Building Appeals pursuant to R.C. §3781.19 and §3781.20.

However, if this Board believes it is, in fact, the appropriate governing Board to hear this appeal the Owners respectfully submit that any and all alleged violations which pertain to the structures upon the Property, and which are specifically referenced in the Notice – 15 Flax Street, have been satisfactorily brought into compliance with the Ohio Building Code and the 2000 International Property Maintenance Code.



CITY OF DELAWARE

There is not conflict with the City Adopted ICC, International Property Maintenance Code and the Ohio Building Code, based off of the 2009 ICC, International Building Code or the Ohio Revised Codes. The Violation Notice was written under a Home Rule adopted code; all legal notices were served and received.

The structures are not in compliance with the State of Ohio's law nor the City's Ordinances with respect to existing buildings and the maintenance thereof.

Further the Board of Zoning Appeals is the proper board to hear such case per Section PM-111.2 and not the Ohio Board of Building Appeals.

FEB - 9 2015

**GORDON LAW OFFICE**

ATTORNEYS AT LAW  
82 NORTH FRANKLIN STREET  
DELAWARE, OHIO 43015

DAVID J. GORDON  
LINDA M. GORDON  
SCOTT M. GORDON

(740) 363-8988  
FAX (740) 369-7810

**Dave@Gordon-Law.com**

Monday, February 9, 2015

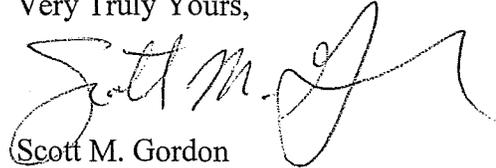
Jerry Warner, C.B.O.  
City of Delaware  
1 S. Sandusky St.  
Delaware, Ohio 43015

**RE: 1 and 15 Flax Street, Delaware, Ohio 43015**

Dear Mr. Warner:

Enclosed please find our clients' Master Application Form requesting an appellate hearing on the issues regarding 15 Flax Street. As you will see, we have included some additional explanation of our positions regarding the complained of issues of 15 Flax Street. We assume the same will be submitted to the board for its review. We thank you for your kind and professional attention to these matters and look forward to hearing from you and/or the appeals board.

Very Truly Yours,



Scott M. Gordon

cc: Behzad Vedaie, Innovative Engineering Group, Inc.

**Jerry Warner, Chief Building Official  
City of Delaware, Ohio  
1 South Sandusky St.**

**RE: Appeal of Condemnation / Demolition Notice issued March 11, 2014 for 15 Flax Street,  
Delaware, Ohio 43015**

**Appeal of Condemnation / Demolition Notice and Determination**

Now comes the undersigned, as counsel for the owners of the real property located at 15 Flax Street, Delaware, Ohio 43015 (hereinafter “the Property”) – Yoav and Schlomo Botach (hereinafter “the Owners”), and hereby appeal the Condemnation / Demolition Notice, dated March 11, 2014 (hereinafter “the Notice”), which was issued to the Owners regarding the structures upon the Property. The Notice was issued by Chief Building Official and Code Enforcement Officer, Jerry Warner, and cited sixteen (16) different 2000 International Property Maintenance Code section violations.

- 1) The Owners believe that the Code sections referenced and alleged to have been violated do not fully apply to the Property; that the true intent of the Code sections have been misinterpreted in this instance; the requirements of these Code sections are adequately satisfied by other means than those sought by City officials; and strict application of the Code sections referenced certainly would cause undue hardship upon the Owners and make strict adherence to such Code sections economically unfeasible.
- 2) The Notice references the common address of “15 Flax St.” and indicates an intention to condemn and demolish the structure located at that address. However, further communication with Mr. Warner indicated the City’s intention to condemn and demolish other structures not commonly referred to as “15 Flax St.” Instead, there is an additional structure located on the Property commonly known as “1 Flax St.” and a third structure – a metal building on the north end of the Property, which bears no common street address. Therefore, the Owners respectfully submit that the Notice fails to properly put them on

notice of the City's intention to condemn and demolish all three (3) structures located on the Property. This belief is supported because the sole reference to any particular address within the Notice is "15 Flax St." and all alleged violations included within said Notice reference only the one structure commonly referred to as "15 Flax St."

- 3) Further, the Owners hereby give Notice that they do not believe the City of Delaware Board of Zoning Appeals is the proper and appropriate Board to hear this Appeal. By the City of Delaware's own Ordinances, the 2000 International Property Maintenance Code Sections 111.1 and 111.2, which was adopted by the City of Delaware by City on October 27, 1997 and incorporated by City Ordinance §1303.01, mandates that any appeal of a decision, notice, or order of the code official be appealed to the Board of Appeals, ie: the Board of Building Appeals.

However, although the City of Delaware has created a Board of Building Appeals, there are no current appointments to said Board and said Board does not comply with the mandated standards imposed by Property Maintenance Code (hereinafter "PM Code") Sections 111.2.1 through 111.2.5.

- 4) The Owners further submit that any appeal of a decision, order, or notice by the City of Delaware's code enforcement official which directly involves condemnation and/or demolition of real property shall be appealed to the State Board of Building Appeals, pursuant to Ohio Revised Code §3781.19 and §3781.20.

The City of Delaware nor Delaware County, Ohio have Boards of Building Appeals which are certified by the State Board of Building Appeals. Additionally, by adopting the 2000 International Property Maintenance Code, in total, some sections of the PM Code - specifically those regarding

condemnation and/or demolition of structures - are in direct conflict with the Ohio Building Code, and, therefore, unlawful as provided by R.C. §3781.01.

Nevertheless, without waiving Owners' objections to the Delaware City Board of Zoning Appeals hearing this appeal but in the interest of attempting to resolve the pending issues alleged in the Notice, the Owners hereby submit the following responses to the alleged violations stated in the Notice dated March 11, 2014.

The Notice included the following citations of the PM Code as alleged violations upon the Property:

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

PM 108.1: When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Specifically, the Owners contest the determination that the Property is not in compliance with the PM Code, as will be explained below. The Owners submit that PM Code 108.1 is in direct conflict with the Ohio Building Code §109.4, and, therefore, any determination that a structure is condemned or unsafe must be done so in strict compliance with the Ohio Building Code and may be appealed to, in this case, the Ohio Board of Building Appeals. The Owners submit that the structure located at 15 Flax Street is no danger to the public, nor does it lack minimum safeguards for its current use. The structure is not unsafe nor does it have an unstable foundation or in any danger of falling down or collapsing.

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

The Owners submit that the structure located at 15 Flax Street is currently vacant and unoccupied, and therefore, not currently being used for Human Occupancy. Pursuant to PM Code 301.3 – Vacant structures and land:

All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Here, the Property is a “vacant structure” and therefore need only comply with PM Code 301.3. The allegations that the Property is not fit for Human Occupancy is irrelevant given the current use and state of the Property.

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate abs may be collected by any other legal resources.

The Owners again hereby submit, that the provisions cited above are in direct conflict with the Ohio Building Code Standards, specifically, §109.4 and, therefore, any determination regarding the same shall be appealable to the Ohio State Board of Building Appeals pursuant to Ohio Building Code §109.1. However, it is clear that the Property and all structures thereon are currently vacant and unoccupied, and not in danger of structural collapse. Further, upon receipt of the Notice, no placard of condemnation was

ever placed upon the Property, the structure located at 15 Flax Street, the structure located at 1 Flax St., nor the metal building at the north end of the Property.

PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option.

As stated above, the Property is currently unoccupied and vacant. However, the Property nor any of the structures located thereon are in any danger of collapsing nor pose any other safety threat to the public. Further, the Chief Building Inspector was to abide by §109 of the Ohio Building Code if he determined that the Property, or any structure thereon, was a "serious hazard" or an "unsafe building".

Additionally, the date which was included within the Notice of April 15, 2014, by which time the Owners were to comply with all of the Notice's requirements, was unreasonably close in time to the Notice's date of March 11, 2014. This date to remedy the alleged violations would have been impossible for the Owners to make all the necessary improvements to the Property as the Notice stated. Therefore, the Notice was not in compliance with PM Code Sections 107.1 and 107.2. Moreover, even assuming the alleged violations were found to be substantiated, the Notice failed to comply with the true intent of the Ohio Building Code Standard §109.1 by not providing a reasonable amount of time to remedy all of the alleged conditions.

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

The Owners disagree with the above stated assertion that the grounds of the Property were a threat to the public health, safety or welfare. A tall metal fence surrounds the northern most metal building upon the Property. Following the receipt of the Notice, the Owners instituted repairs to the Property to secure any and all doorways as best as

possible to deter potential trespassers' entry into the structures. Owners further replaced all window glass which was in danger of potentially falling out of window frames with plexi-glass. Lastly, the Owners had representatives visit the Property on a weekly basis to inspect the structures upon the Property for signs of any breaking and entering by trespassers. Additionally, the City's official complained of exposed bare wood needing to be freshly painted and the need to replace on structure's gutter: those circumstances can hardly be said to constitute a threat to the public's safety or health.

PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition.

Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

Again, PM Code 301.3 specifically provides the standard to which a vacant and used structure is to be held by the City of Delaware. The structures upon the Property pose no sanitary risks nor pose any danger of collapse to the public. So long as the structures upon the Property comply with PM Code 301.3, the additional alleged violations and their corresponding code sections do not apply to this circumstance and property. Nevertheless, the exterior walls of the structures upon the Property are in good repair, and the one particular wall which had been identified by the Chief Building Official in need of repair has, in fact, been repaired and finished.

PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.

The City's official stated in the Notice that tuck pointing some stone walls was necessary. However, such improvements and repairs, while potentially beneficial to the Owners and the Property, are not necessary to ensure the safety and structural integrity of the Property and the structures thereon. Furthermore, there are no signs of any water penetration through the foundation or structures' walls.

PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

This section does not apply to the Property nor the structures thereon given that all structures are currently vacant and unoccupied.

PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

There is no indication that any appurtenances as listed above were in any danger of collapsing or deteriorating nor posed a threat to the public health or safety. The applicability of this section has been misinterpreted.

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

As stated above, following the Notice the Owners had all broken glass which may have been in danger of falling from any window frame replaced with plexi-glass to eliminate the risk of a trespasser or lawful invitee from being hurt by any falling window glass.

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

PM 505.1: Every sink lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

PM Code 301.3 causes the above section not to apply to the Property and the structures thereon.

PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

The Owners submit that PM Code 111.1 is in direct conflict with terms of Ohio Building Code Standard 109 which provide, specifically, for the appellate process against a determination related to condemnation, demolition, or the need to raze a structure. Therefore, the procedure as provided within the Notice was unlawful and unenforceable given its direct conflict with the provisions of the Ohio Building Code and Ohio Revised Code §3781.01 *et seq.*

The alleged violations of the 2000 International Property Maintenance Code, as adopted by the City of Delaware, which actually apply to the Property and the structures thereon, have all been remedied as provided by Ohio law. The Property is currently in compliance with the laws of the State of Ohio and City of Delaware ordinances. The vacant and unoccupied, yet secured and safe structures upon the Property pose no threat to the public's safety nor health. The City of Delaware lacks the proper compliance and

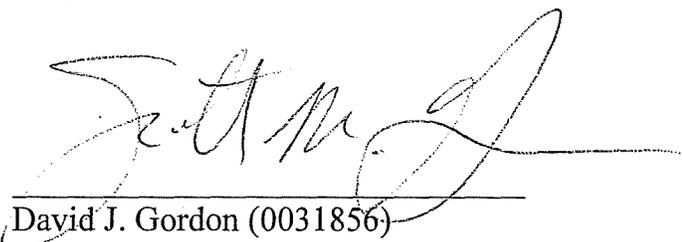
authority to institute and maintain an effort to condemn and demolish the structures upon the Property. The City's requested relief is improper due to its failure to follow the clearly expressed procedures found within the Ohio Revised Code and the Ohio Building Code.

Moreover, the City of Delaware Board of Zoning Appeals lacks the appropriate authority to hear any appeal of alleged violations of the Property Maintenance Code as PM Code Section 111 clearly provides. It is the Owners position that this appeal from the Notice should be heard by the Ohio State Board of Building Appeals pursuant to R.C. §3781.19 and §3781.20.

However, if this Board believes it is, in fact, the appropriate governing Board to hear this appeal the Owners respectfully submit that any and all alleged violations which pertain to the structures upon the Property, and which are specifically referenced in the Notice – 15 Flax Street, have been satisfactorily brought into compliance with the Ohio Building Code and the 2000 International Property Maintenance Code.

Lastly, the Notice only refers to the structure commonly referred to as “15 Flax St.” The absence of any reference to the two (2) remaining structures located upon the Property causes the City of Delaware to be prohibited from pursuing condemnation / demolition procedures as to these two (2) remaining structures. The City shall be prohibited from pursuing condemnation / demolition efforts regarding these two (2) additional structures without first issuing additional notices specifically referencing those structures and which adhere to the mandates of the Ohio Building Code and the Property Maintenance Code.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott M. Gordon", written over a horizontal line.

David J. Gordon (0031856)  
Scott M. Gordon (0085247)  
Counsel for Plaintiffs  
82 North Franklin Street  
Delaware, Ohio 43015  
740/363-8988  
740/369-7810 – Fax  
Scott@Gordon-Law.com

# Delaware City Police

## DISPATCH CLOSED INCIDENT LIST

Printed On: 03/06/2015 10:57 AM

Date Range From: 76340 Through: 78230

C	Incident No.	Date	Time	Nature	Common Name	Address
<input type="checkbox"/>	15-00004273	01/13/2015	01:38:48	911 Cellular Hang-Up/Open/Misdial	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	14-00047881	05/03/2014	20:18:39	Suspicious Activity	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	14-00039830	04/13/2014	18:24:04	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	14-00033321	03/28/2014	14:27:05	Suspicious Activity	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	14-00012106	02/02/2014	16:18:59	Open Door	WEST OF	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00078753	07/20/2013	21:56:52	Suspicious Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00070239	06/30/2013	19:14:15	Suspicious Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00062607	06/13/2013	00:56:31	Suspicious Person	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00061911	06/11/2013	09:37:52	Traffic Stop	DEAD END	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00056652	05/29/2013	18:54:21	Follow-Up/Investigation	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00040111	04/20/2013	20:33:39	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00035456	04/09/2013	16:13:18	Special Detail	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00023801	03/08/2013	17:12:46	Juvenile Complaint	OLD MATHIS BUILDING	15 FLAX ST DELAWARE
<input type="checkbox"/>	13-00005720	01/17/2013	16:14:17	Animal Call	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00127490	11/04/2012	09:32:57	Open Door	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00121109	10/17/2012	18:23:55	Business / House Check	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00084928	07/19/2012	00:55:54	Suspicious Person/Vehicle	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00078220	07/03/2012	02:00:11	Open Garage/Prev. Patrol Notice	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00055942	05/11/2012	20:56:57	Extra Patrol		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00055922	05/11/2012	20:00:45	Burglary In Progress	COMPUTRADE INTERNATIONAL	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00041444	04/05/2012	11:03:53	Vandalism		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00039781	04/01/2012	13:43:51	Open Door		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00039710	04/01/2012	08:40:31	Open Door		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00038797	03/30/2012	02:07:47	Business / House Check	ALLIED MOVING & STORAGE	15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00024462	02/27/2012	21:11:28	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00003865	01/11/2012	10:47:03	Vandalism		15 FLAX ST DELAWARE
<input type="checkbox"/>	12-00000789	01/03/2012	12:07:50	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00139222	12/30/2011	14:32:47	Follow-Up/Investigation		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00139128	12/30/2011	10:49:09	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00138283	12/28/2011	10:14:20	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00138215	12/28/2011	03:44:34	Business / House Check		15 FLAX ST DELAWARE

# Delaware City Police

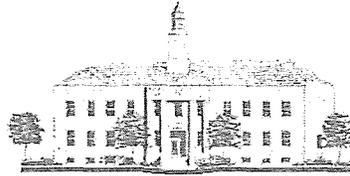
## DISPATCH CLOSED INCIDENT LIST

Printed On: 03/06/2015 10:57 AM

Date Range From: 76340 Through: 78230

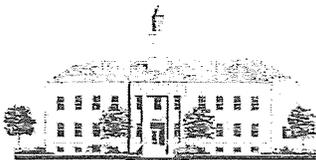
C	Incident No.	Date	Time	Nature	Common Name	Address
<input type="checkbox"/>	11-00135479	12/19/2011	16:47:42	Suspicious Person/Vehicle		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00131161	12/08/2011	15:03:57	Extra Patrol		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00129380	12/03/2011	14:20:36	Warrant		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00128226	11/30/2011	11:38:36	TRAINING		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00122555	11/15/2011	10:43:15	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00121594	11/12/2011	17:18:03	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00120921	11/11/2011	02:57:43	Open Door		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00117707	11/02/2011	13:54:54	Open Garage/Prev. Patrol Notice		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00115786	10/28/2011	13:59:44	Juvenile Complaint		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00114716	10/25/2011	18:50:27	Follow-Up/Investigation	ALLIED MOVING & STORAGE	15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00087645	08/16/2011	12:04:13	Open Door		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00084189	08/07/2011	08:08:12	Open Door		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00083972	08/06/2011	18:01:41	Suspicious Activity		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00083546	08/05/2011	16:39:23	Follow-Up/Investigation		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00083223	08/04/2011	21:32:52	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00082888	08/04/2011	01:33:02	Extra Patrol		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00082780	08/03/2011	19:43:48	Burglary		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00082773	08/03/2011	19:24:06	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00082096	08/02/2011	00:22:16	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00081648	07/31/2011	17:39:59	Juvenile Complaint		15 FLAX ST DELAWARE
<input type="checkbox"/>	11-00063769	06/17/2011	12:56:39	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00097761	09/22/2010	19:43:37	Juvenile Complaint		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00086560	08/26/2010	09:50:12	Follow-Up/Investigation		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00080569	08/11/2010	12:24:52	Suspicious Activity		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00071371	07/20/2010	00:38:14	Follow-Up/Investigation		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00069447	07/15/2010	00:35:16	Business / House Check		15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00068801	07/13/2010	13:55:59	B&E	MATHIS	15 FLAX ST DELAWARE
<input type="checkbox"/>	10-00039900	05/05/2010	00:38:52	Open Garage/Prev. Patrol Notice		15 FLAX ST DELAWARE

Total calls: 59



CITY OF DELAWARE

## Previous Violation Notices Pertaining to 15 Flax Street From the City of Delaware



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

Monday, November 23, 2009

Yoav & Schlomo Botach  
5011 West Pico Blvd.  
Los Angeles, CA. 90019

Re: 15 Flax Street

Dear Gentlemen,

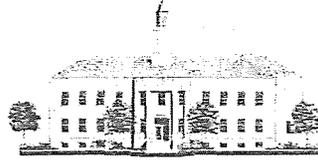
I was notified by our Fire Department that the buildings located at 15 Flax Street are not secured, the door locks have been broken and one of the windows on the second floor is broken out, as you can imagine we are concerned of vandalism or arson. Please secure the buildings with in one week or by December 2, 2009.

On another matter, Officer John Hartman with our Police Department was asking if they could obtain permission to use the two older buildings for non-destructive Simunition training. I informed him that I would be contacting you about securing the buildings and would ask. With that said, is there anyway we can make arrangements to use your facilities for training and once we are through, secure the buildings behind us.

Please consider my request; I look forward to hearing from you.

Respectfully,

Jerry Warner, C.B.O.  
Chief Building Official  
740-203-1651  
jwarner@delawareohio.net



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

Tuesday, May 11, 2010

Yoav & Schlomo Botach  
5011 West Pico Blvd.  
Los Angeles, CA. 90019

Re: 15 Flax Street, Notice of Violations, mowing, garbage and waste material, property maintenance codes

Dear Gentlemen,

As you know I sent you a notice dated November 23, 2009 regarding the condition of the above referenced property. The City agreed to secure the structure if we could use it for Simunition Training but we never received the signed agreement.

Vacant structures such as yours located at 15 Flax Street are an attractive nuisances and in danger of vandalism or arson.

PM-301.2: The owner of the premises shall maintain the structures and exterior property in compliance with these requirements.

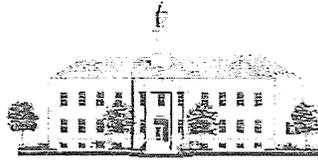
PM 108.1: General; when a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

PM-108.1.1: Unsafe structure; an unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants off the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

***This structure is found to be unsafe and dangerous to the life, health or safety of the public due to it being decayed and dilapidated and structurally unsafe.***

PM-108.1.3: A structure is unfit for Human Occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

***This structure is unfit for Human Occupancy by not provided adequate ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code.***



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

PM- 108.2: If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through and available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate as may be collected by any other legal resources.

***The structure must be secured on or before 5/21/10. The method used to secure the structure must match the structure in material and color.***

PM-110.1: The code official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated and has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and as such it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option..

PM-303.1: The exterior property of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

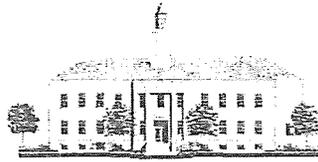
***This property poses a threat to the public welfare by becoming an attractive nuisance, it is not in good repair and areas on the exterior are not structurally sound. The gutters on the south side of the building needs to be removed or replaced.***

PM-303.2: All exterior surfaces, including but not limited to, doors and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidations are exempt from this requirement.

***Scrape the loose and peeling paint on the exterior siding, overhangs, fascia, windows and doors, primer all bare wood and paint the outside of the home to prevent further decay, try to work in a lead safe manner. Paint all bare metal on the outside of the home to protect from further deterioration.***

PM-303.4: All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-303.5: All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pest.



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

***Re-tuck point the stone foundation walls where necessary..***

PM-303.6: All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weather proof and properly surface coated where required to prevent deterioration.

***Repair and replace with new wood where necessary the deteriorated cornices, box beams and fascia around the structure***

PM-303.11: All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay by periodic application of weather-coating materials, such as paint or similar surface treatment.

***Check other existing chimneys to make certain they are structurally sound, repair brick, mortar and flashings where necessary to make structurally sound. Rebuild chimney that deteriorated and fell off of the roof and repair the roof area around the chimney.***

PM-303.13: Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

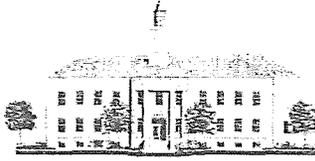
***Replace all broken glass and install glass in openings where missing, repair windows, and make operable along with all exterior doors, use proper glazing and paint to protect.***

PM-304.1: All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

***Remove all loose and peeling paint from the inside of the building. Repair all holes where the plaster has broken loose from the lath. Prepare the walls, windows and doors for new paint, and paint interior to comply with this code.***

PM-111.1: Any person affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provision of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

PM-106.3: Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed guilty a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceedings at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

PM-106.4: Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

***Other than the date of compliance referenced in PM-108.2, I must request the structure be repaired and brought into full compliance with the adopted City Property Maintenance Code by 6/11/10 or be razed.***

**Notice to Mow:**

**905.01 - WEEDS-CUTTING REQUIRED**

Our office has also received a complaint regarding **weeds and/or high grass** on the above property. We must request the high grass and/or weeds be cut or destroyed and removed within the ***next five (5) days, or by May 3, 2010. This is the only notice you will receive this year.***

It is a prima-facie violation of the Delaware Codified Ordinances if high grass and/or weeds of twelve inches or more exist on any lot on any of the following dates: May 15, June 1, June 15, July 1, July 15, August 1, August 15, September 1 or September 15. Failure to comply with this notice will result in our hiring the work to be performed and billing the property owner of this land.

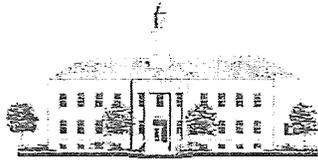
Such cutting and removing shall be at the owner's expense and the costs, together with an administrative fee of twenty percent (20%) shall be assessed against the lot or land. Such administrative fee shall not exceed two hundred dollars (\$200.00).

Notice of such assessment shall be given to the owner of the lot or land charged therewith, or his agent, either in person or left at the usual place of residence or sent by mail, and all assessments not paid within ten days after the giving of such notice shall, after approval by Council, be certified by the Clerk of Council to the County Auditor to be placed on the tax duplicate and collected as other taxes are collected.

**Notice to Remove Waste Materials:**

**521.08 LITTERING AND DEPOSIT OF GARBAGE AND WASTEFUL MATERIAL.**

- (a) No person, except as permitted in Chapter 929 of the Streets, Utilities and Public Services Code, being the owner, person in charge, tenant or occupant of premises, shall place or allow to be placed, accumulated or deposited upon any public property, premises of another or any lots or lands in the City, any paper, trash, garbage, waste, refuse or any substance which is, or may be noxious, offensive, injurious or dangerous to the public health, comfort or safety.
- (b) No person shall place or allow to be placed or deposited upon any lots or lands in the City any waste, debris or material resulting from the demolition, repair or alteration of any building, or trees or limbs



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

resulting from the removal of trees, or any other waste material without written permission of the City Manager or designated representative.

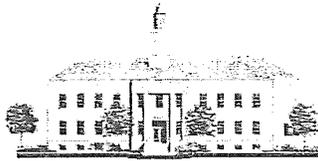
- (c) Upon determination that such an accumulation or deposit of material specified in subsections (a) or (b) hereof exists, the City Manager or designated representative shall cause a written notice of such violation to be posted at the site of the violation giving the owner, person in charge, tenant or occupant forty-eight hours to remove such deposit or accumulation. In addition to physically posting the site of the violation, the City Manager or designated representative shall seek to personally notify the owner, person in charge, tenant or occupant of such violation during such forty-eight hour period. Posting the property shall be deemed sufficient notice of violation whether or not personal notice is given.
- (d) In the event that the owner, person in charge, tenant or occupant of any premises, having been notified under subsection (c) hereof, does not remove the deposit or accumulation specified in the notice of violation and removal order within the forty-eight hour time period, the City Manager or designated representative shall cause such deposit or accumulation to be removed and shall charge the cost of such removal, together with the administrative costs incurred with regard to such removal, to the owner, person in charge, tenant or occupant, if such cost is not paid by the owner, person in charge, tenant or occupant within a reasonable time, the sum may be certified by the proper City official to the County Auditor and placed upon the tax duplicate for collection as a special assessment against such premises, to be collected as other taxes and assessments are collected. The City may also collect such costs through a civil action in the appropriate court of law having jurisdiction thereof. Such remedies shall be in addition to the penalty provided in subsection (e) hereof. (Ord. 80-6. Passed 3-10-80).
- (e) Whoever violates any provision of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. (Ord. 89-13. Passed 2-27-89).

***Remove couch and furniture on the grounds around the buildings.***

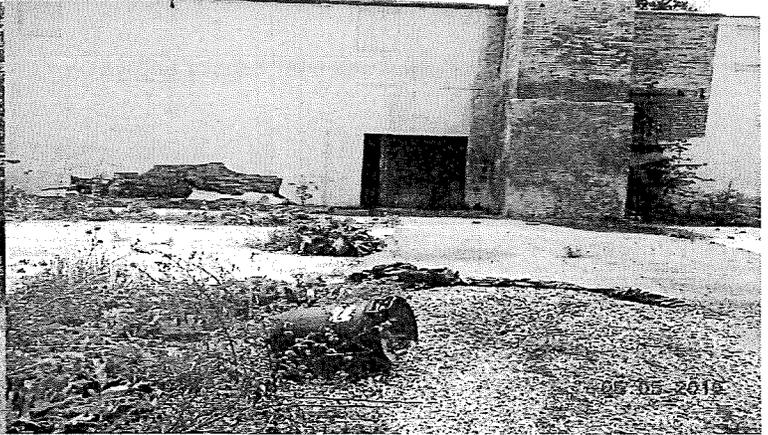
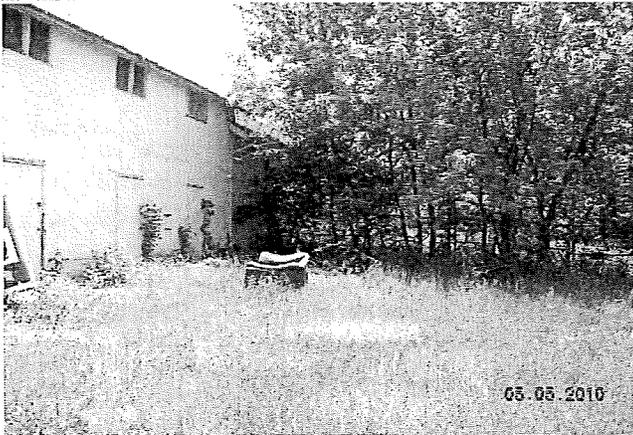
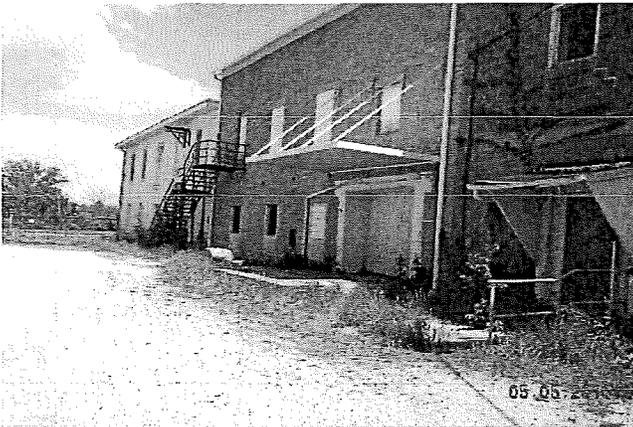
Should you have questions, I may be reached at 740-203-1651.

Respectfully,

Jerry Warner, C.B.O.  
Chief Building Official and Code Enforcement Officer



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT





CITY OF DELAWARE

**NOTICE OF VIOLATION  
COMPLIANCE REQUIRED ON OR BEFORE  
August 18, 2011**

**August 4, 2011**

**BOTACH YOAV SCHLOMO  
5011 W PICO BLVD  
LOS ANGELES CA 90019**

Parcel ID: 51943128075000

Address: 15 FLAX ST  
DELAWARE, OHIO 43015

Reference Number: 20111543

During a recent inspection of the above referenced property address, the following violation(s) of the Codified Ordinances of the City of Delaware was found to exist on the property. A corrective action can be found immediately after each violation.

**Violation:**

Section 305.1. Accumulation of Rubbish and Garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

**Violation Detail:**

Please remove and dispose of properly the scrap wood and loose trash.

**Remedy:**

Violator shall remove all rubbish and/or garbage.

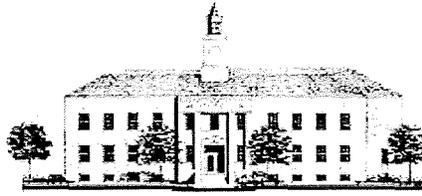
Failure to satisfactorily complete the corrective action(s) and fully remedy the violation(s) listed above on or before **August 18, 2011** may result in the City of Delaware taking corrective action, assessing the cost of such action together with incurred administrative costs to the owner of the property, and/or seeking correction action(s) and penalty(s) in the appropriate court of law.

Certain interpretations of the Codified Ordinances of the City may be appealed to the Board of Zoning Appeals within thirty (30) days after the date of this notice of violation. Interpretations of the ICC International Property Maintenance Code may be appealed to the Board of Zoning Appeals within twenty (20) days after the date of this notice of violation.

Thank you in advance for your timely response to this matter. Please contact the Planning & Community Development Department at (740) 203-1630 with any questions or to discuss this notice of violation. Please

Page 2  
Notice of Violation  
August 04, 2011

have the reference number available when calling.



CITY OF DELAWARE

**POSTED**

**NOTICE OF VIOLATION & REMOVAL ORDER  
COMPLIANCE REQUIRED ON OR BEFORE**

**August 28, 2011**

**Posting Date: August 19, 2011**

**Parcel ID: 51943128075000**

**Reference Number: 20111543**

**Property Owner: BOTACH YOAV SCHLOMO  
5011 W PICO BLVD  
LOS ANGELES CA 90019**

**Address: 15 FLAX ST  
DELAWARE, OHIO 43015**

By posting of this notice of violation at the above referenced property address, notice is hereby given that this property is found to be in violation of Section 521.08 of the Codified Ordinances of the City of Delaware, which prohibits the placement, accumulation or depositing upon any property any paper, trash, garbage, waste, refuse or any substance which is, or may be noxious, offensive, injurious or dangerous to the public health, comfort or safety, including any waste, debris or material resulting from the demolition, repair or alteration of any building, or trees or limbs resulting from the removal of trees, or any other waste material.

As required by Section 521.08(c), the owner, person in charge, tenant, or occupant notified by this posting is hereby ordered to remove the following items from the property:

**Please remove and dispose of properly the scrap wood and loose trash.**

Failure to remove these items on or before **August 28, 2011** will result in the City of Delaware causing said items to be removed and shall charge the cost of such removal, together with the administrative costs incurred with regard to such removal, to the owner, person in charge, tenant, or occupant. If such cost is not paid, the sum may be placed upon the tax duplicate for collection as a special assessment against such premises, to be collected as other taxes and assessments are collected. The City may also collect such costs through a civil action in the appropriate court of law having jurisdiction thereof.

Additional penalties may also be sought in an appropriate court of law. Whoever violates any provision of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Please contact the Planning & Community Development Department at (740) 203 1630 with any questions or to discuss this notice of violation and removal order. Please have the reference number available when calling.



CITY OF DELAWARE  
NOTICE OF VIOLATION  
COMPLIANCE REQUIRED ON OR BEFORE  
May 11, 2011

May 06, 2011

**BOTACH YOAV SCHLOMO**  
5011 W PICO BLVD  
LOS ANGELES CA 90019

Parcel ID:               **3569769**  
Address:                 **15 FLAX ST**  
  
Reference Number:     **20110752**

**905.01 - WEEDS-CUTTING REQUIRED**

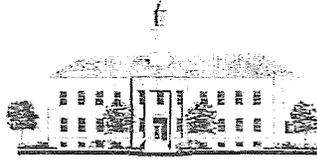
Our office has received a complaint regarding **weeds and/or high grass** on the above property. We must request the high grass and/or weeds be cut or destroyed and removed **by May 11, 2011**. *This is the only notice you will receive this year.*

It is a prima-facie violation of the Delaware Codified Ordinances if high grass and/or weeds of twelve inches or more exist on any lot on any of the following dates: May 15, June 1, June 15, July 1, July 15, August 1, August 15, September 1 or September 15. Failure to comply with this notice will result in our hiring the work to be performed and billing the property owner of this land.

Such cutting and removing shall be at the owner's expense and the costs, together with an administrative fee of twenty percent (20%) shall be assessed against the lot or land. Such administrative fee shall not exceed two hundred dollars (\$200.00).

Notice of such assessment shall be given to the owner of the lot or land charged therewith, or his agent, either in person or left at the usual place of residence or sent by mail, and all assessments not paid within ten days after the giving of such notice shall, after approval by Council, be certified by the Clerk of Council to the County Auditor to be placed on the tax duplicate and collected as other taxes are collected.

We look forward to your anticipated cooperation. If you have any questions or need assistance, please do not hesitate to call. We may be reached at 740-203-1630.



CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT

October 27, 2011

BOTACH YOAV  
SCHLOMO  
5011 W PICO BLVD  
LOS ANGELES, CA 90019

Re: Property located at 15 Flax Street

**Violation of Section 1321.09 of the Codified Ordinances of Delaware Ohio**

Dear Yoav and Schlomo Botach:

We have received a complaint regarding electrical service work conducted without approval at this location. We are obligated to report this to the local power company (AEP). This will result in the electric service being discontinued at this location.

According to section 1321.09 of the Codified ordinances of Delaware Ohio:

**1321.09 ELECTRICIANS.**

No person shall install new or temporary electrical service without first applying for and obtaining a permit from the Building Inspector, and shall at the time the permit is issued, pay a fee in accordance with the fee schedule in Section 1321.01.

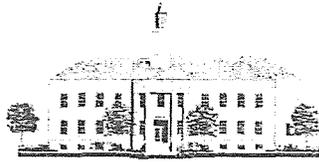
(Ord. 04-200. Passed 12-20-04.)

Please call us at 203-1650 at your earliest convenience.

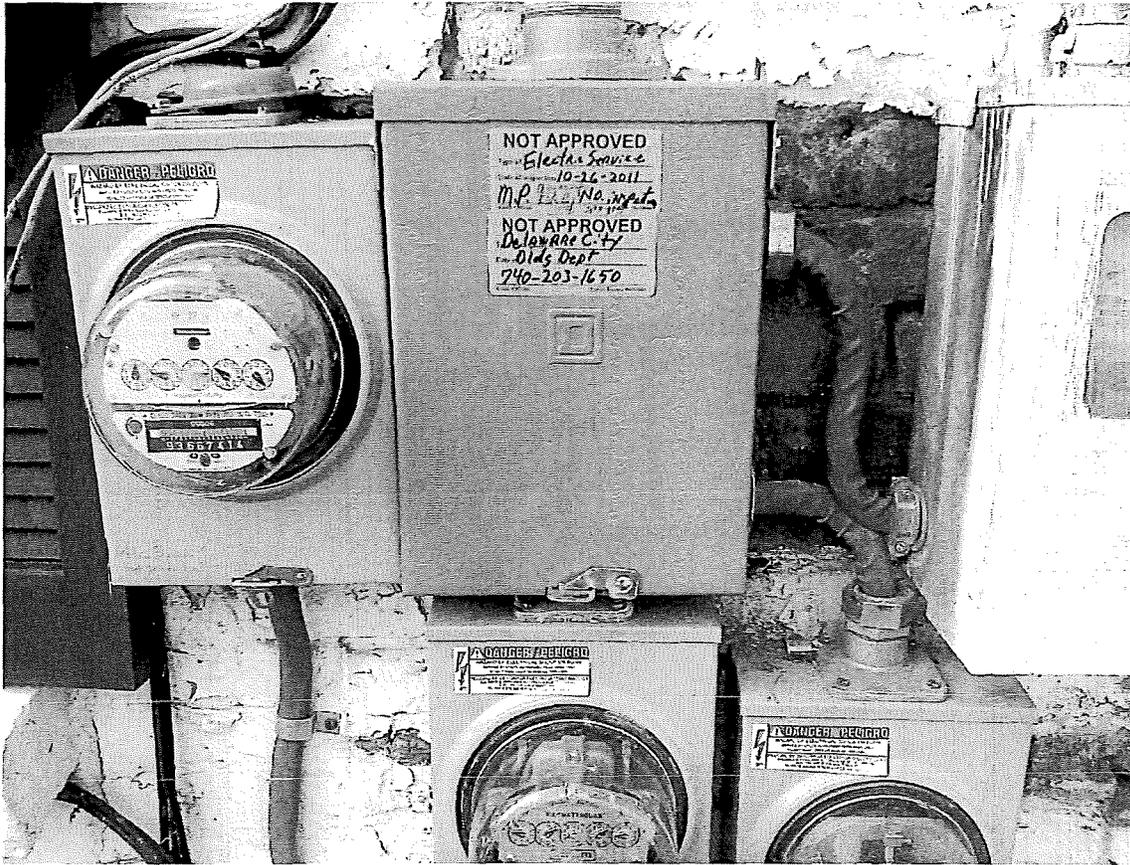
Section 1128.01 of the Delaware City Codified Ordinances states, *"Appeals to the Board of Zoning Appeals may be taken by any person, or by any government officer, board or department of the City, deeming himself or itself to be adversely affected by a decision of the Director of Planning and Community Development, or by any administrative officer of the City deciding matters relating to this Zoning Ordinance."*

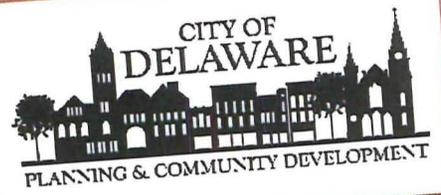
Under Section 111 of the 2000 International Property Maintenance Code, *"Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means, or that the strict application of any requirement of this code would cause an undue hardship."*

Respectfully,  
Marvin Phipps  
Electrical Safety Inspector  
City of Delaware  
Building Department  
740 203-1650  
mhipps@delawareohio.net



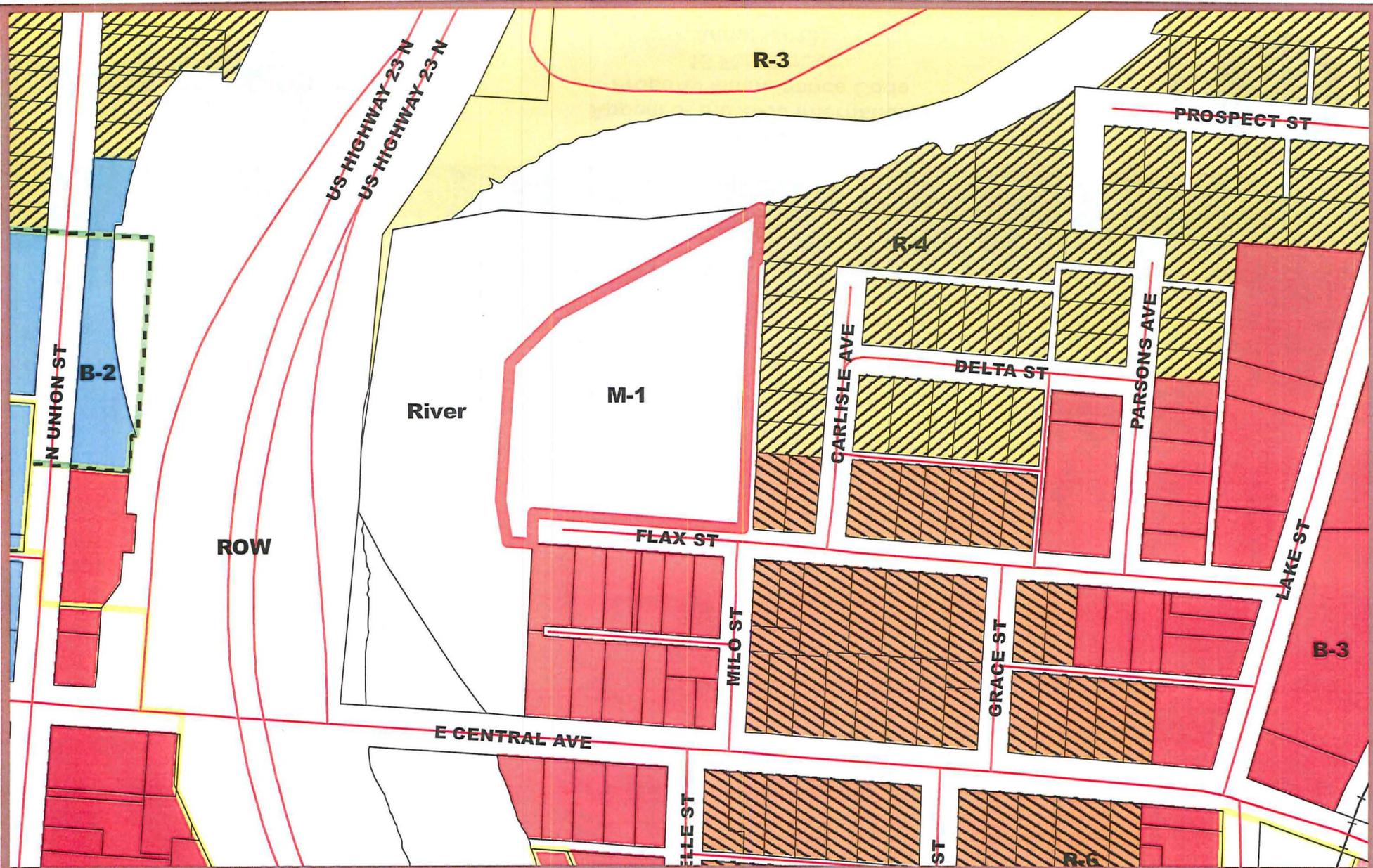
CITY OF DELAWARE • PLANNING AND COMMUNITY DEVELOPMENT





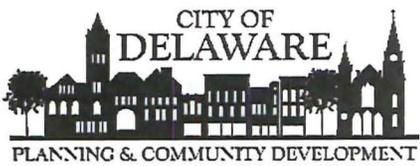
2015-0213  
Appeal of the 2000 International  
Property Maintenance Code  
15 Flax Street  
Location Map





2015-0213  
 Appeal of the 2000 International  
 Property Maintenance Code  
 15 Flax Street  
 Zoning Map





2015-0213  
Appeal of the 2000 International  
Property Maintenance Code  
15 Flax Street  
Aerial (2013)





05-05-2010



05.05.2010

05.05.2010





05.05.2010



05.05.2010



05.05.2010



05.05.2010



05.05.2010



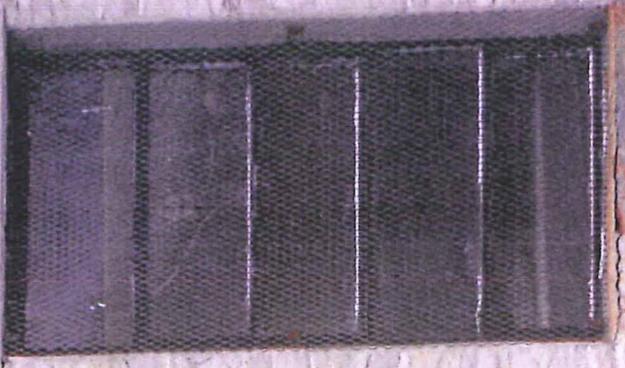
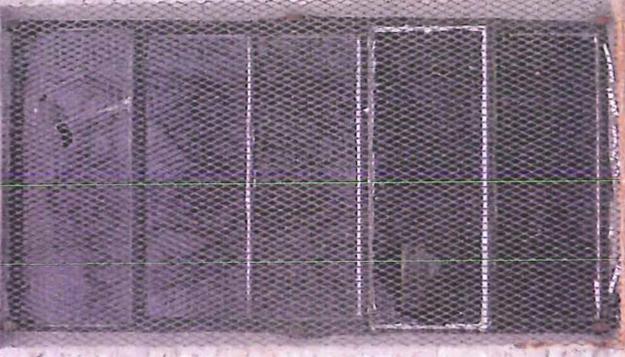
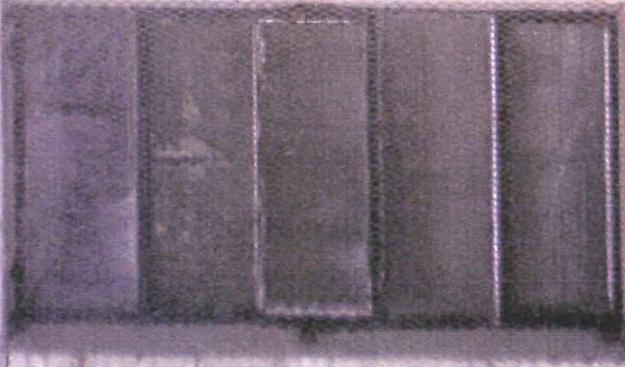
03.05.2015 13:36



03.05.2015 13:37



03.05.2015 13:37



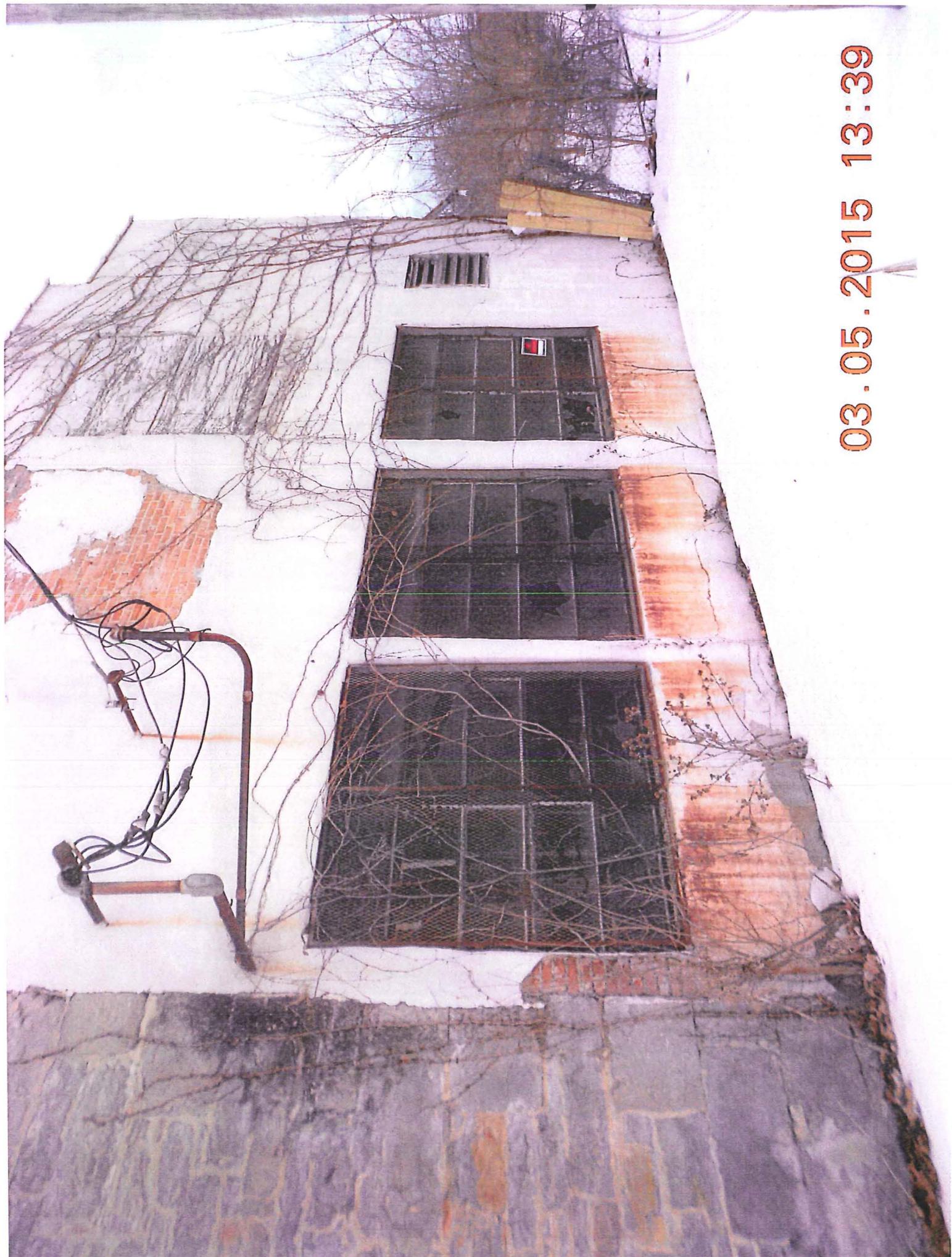
03.05.2015 13:38



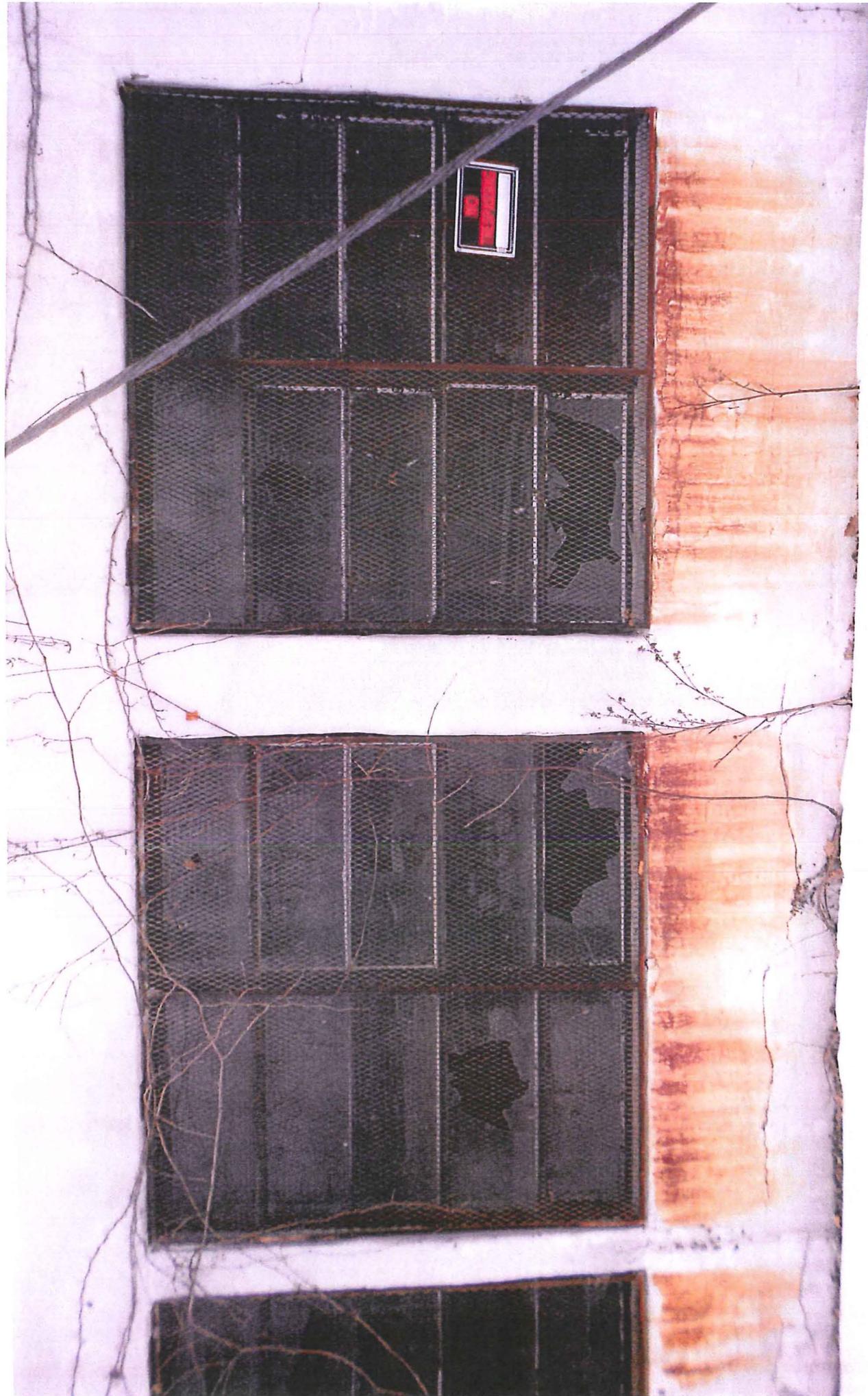
03.05.2015 13:39



03-05-2015 13:39



03.05.2015 13:39



03.05.2015 13:40



03.05.2015 13:41

03.05.2015 13:41





03.05.2015 13:42



03.05.2015 13:43

03.05.2015 13:43





03.05.2015 13:44



03:05:2015 13:44



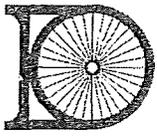
03.05.2015 13:45

03.05.2015 13:45





03.05.2015 13:49



**CITY OF DELAWARE, OHIO  
PLANNING & COMMUNITY DEVELOPMENT  
MASTER APPLICATION FORM**



Project # \_\_\_\_\_ Case # 2015-0213

**Planning Commission**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Amended Final Development Plan                | <input type="checkbox"/> Final Development Plan Extension | <input type="checkbox"/> Substitution of a Non-Conforming Use                        |
| <input type="checkbox"/> Amended Final Subdivision Plat                | <input type="checkbox"/> Final Subdivision Plat           | <input type="checkbox"/> Vacation-Alley  |
| <input type="checkbox"/> Amended Preliminary Development Plan          | <input type="checkbox"/> Final Subdivision Plat Extension | <input type="checkbox"/> Vacation-Easement   |
| <input type="checkbox"/> Amended Preliminary Subdivision Plat          | <input type="checkbox"/> Floodplain Permit                | <input type="checkbox"/> Vacation-Street   |
| <input type="checkbox"/> Annexation Review                             | <input type="checkbox"/> Lot Split                        | <input checked="" type="checkbox"/> <b>Board of Zoning Appeals</b>                   |
| <input type="checkbox"/> Combined Preliminary & Final Development Plan | <input type="checkbox"/> Pre-annexation Agreement         | <input checked="" type="checkbox"/> Appeal Administrative Decision or Interpretation |
| <input type="checkbox"/> Comprehensive Plan Amendment                  | <input type="checkbox"/> Preliminary Development Plan     | <input type="checkbox"/> Conditional Use Permit                                      |
| <input type="checkbox"/> Concept Plan                                  | <input type="checkbox"/> Preliminary Dev Plan Extension   | <input type="checkbox"/> Substitution of Equal or Less Non-Conforming Use            |
| <input type="checkbox"/> Conditional Use Permit                        | <input type="checkbox"/> Preliminary Sub Plat             | <input type="checkbox"/> Variance  |
| <input type="checkbox"/> Determination of Similar Use                  | <input type="checkbox"/> Preliminary Sub Plat Extension   |  |
| <input type="checkbox"/> Development Plan Exemption                    | <input type="checkbox"/> Rezoning                         |  |
| <input type="checkbox"/> Final Development Plan                        | <input type="checkbox"/> Subdivision Variance             |  |

Subdivision/Project Name \_\_\_\_\_ Address 15 Flax Street, Delaware, Ohio 43015  
 Acreage \_\_\_\_\_ Square Footage \_\_\_\_\_ Number of Lots \_\_\_\_\_ Number of Units \_\_\_\_\_  
 Zoning District/Land Use \_\_\_\_\_ Proposed Zoning/Land Use \_\_\_\_\_ Parcel # \_\_\_\_\_

Applicant Name Yoav and Schlomo Botach Contact Person: David J. Gordon, attorney at law  
 Applicant Address 5011 W. Pico Blvd., Los Angeles, CA 90019  
 Phone 740-363-8988 Fax 740-369-7810 E-mail dave@gordon-law.com  
 Owner Name same as above Contact Person same as above  
 Owner Address same as above  
 Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_  
 Engineer/Architect/Attorney David J. Gordon, attorney at law Contact Person \_\_\_\_\_  
 Address 82 North Franklin Street, Delaware, Ohio 43015  
 Phone 740-363-8988 Fax 740-369-7810 E-mail dave@gordon-law.com

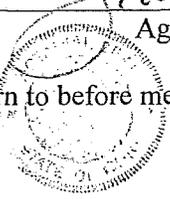
The undersigned, do hereby verify the truth and correctness of all facts and information presented with this application and authorize field inspections by City Staff.

Owner Signature \_\_\_\_\_  
 Agent Signature \_\_\_\_\_

Owner Printed Name Scott M. Gordon  
 Agent Printed Name \_\_\_\_\_

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 2015

AK  
 \_\_\_\_\_  
 Notary Public



Notary Stamp

